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10

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION  
14

15 **VICTOR M. MONTEZ,**

Petitioner,

17 v.

18 **BEN CURRY, Warden,**

19 Respondent.

Case No. C 08-0815 VRW

**ANSWER TO ORDER TO SHOW  
CAUSE; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Judge: The Honorable Vaughn R. Walker

20  
21 As an Answer to the Petition for Writ of Habeas Corpus filed by inmate Victor M. Montez,  
22 Respondent admits, alleges, and denies that:

23 1. Montez is in the lawful custody of the California Department of Corrections and  
24 Rehabilitation following his 1982 conviction of second-degree murder. (Pet. at 1.) Montez is  
25 serving a life sentence with the possibility of parole. (*Id.*)

26 2. In 2007, Montez filed a petition for writ of habeas corpus in Los Angeles County  
27 Superior Court, alleging that the Board of Parole Hearings' 2006 decision denying him parole  
28 violated his due process rights. (Ex. 1, Super. Ct. Pet.; Ex. 2, [Super. Ct.] Order Re: Writ of

Answer to Order to Show Cause; Mem. of P. & A.

*Montez v. Curry*  
Case No. C 08-0815 VRW

1 Habeas Corpus.) The superior court denied the petition, finding that “the record contains ‘some  
2 evidence’ to support the Board’s finding that petitioner is unsuitable for parole.” (Ex. 2 at 2  
3 (citations omitted).)

4 3. Montez then raised the same claims in petitions to the California Court of Appeal and  
5 the California Supreme Court. (Ex. 3, Ct. App. Pet.; Ex. 4, Sup. Ct. Pet.) Both courts summarily  
6 denied the petitions. (Ex. 5, Ct. App. Order; Ex. 6, Sup. Ct. Denial.)

7 4. Respondent admits that Montez exhausted his state court remedies regarding the claim  
8 that the Board’s 2006 decision violated his due process rights. Respondent denies that Montez  
9 has exhausted his claims to the extent they are interpreted more broadly to encompass any  
10 systematic issues beyond this claim.

11 5. Respondent admits that the Petition is timely under 28 U.S.C. § 2244(d)(1).  
12 Respondent admits that the Petition is not subject to any other procedural bar.

13 6. Respondent denies that Montez is entitled to federal habeas relief under 28 U.S.C. §  
14 2254 because the state court decisions were not contrary to, or an unreasonable application of  
15 clearly established federal law as determined by the United States Supreme Court, or based on an  
16 unreasonable determination of the facts.

17 7. Respondent denies that Montez has a federally protected liberty interest in parole and,  
18 therefore, alleges that he has not stated a federal question invoking this court’s jurisdiction. The  
19 Supreme Court has not clarified the methodology for determining whether a state has created a  
20 federally protected liberty interest in parole. *See Greenholtz v. Inmates of Neb. Penal & Corr.*  
21 *Complex*, 442 U.S. 1, 12 (1979) (liberty interest in conditional parole release date created by  
22 unique structure and language of state parole statute); *Sandin v. Connor*, 515 U.S. 472, 484  
23 (1995) (federal liberty interest in correctional setting created only when issue creates an “atypical  
24 or significant hardship” compared with ordinary prison life); *Wilkinson v. Austin*, 545 U.S. 209,  
25 229 (2005) (*Sandin* abrogated *Greenholtz*’s methodology for establishing the liberty interest).  
26 Continued confinement under an indeterminate life sentence does not impose an “atypical or  
27 significant hardship” under *Sandin* since a parole denial does not alter an inmate’s sentence,  
28 impose a new condition of confinement, or otherwise restrict his liberty while he serves his

1 sentence. Thus, Respondent asserts that Montez does not have a federal liberty interest in parole.  
2 Respondent acknowledges that in *Sass v. Cal. Bd. of Prison Terms*, 461 F.3d 1123, 1128 (9th  
3 Cir. 2006) the Ninth Circuit held that California's parole statute creates a federal liberty interest  
4 in parole under the mandatory-language analysis of *Greenholtz*, but preserves the argument,  
5 which is pending en banc review in *Hayward v. Marshall*, 527 F.3d 797 (9th Cir. 2008).

6 8. Even if Montez has a federal liberty interest in parole, he received all due process to  
7 which he is entitled under clearly established federal law because he was provided with an  
8 opportunity to be heard and a statement of reasons for the Board's decision. *Greenholtz*, 442  
9 U.S. at 16.

10 9. Respondent denies that the some-evidence standard is clearly established federal law in  
11 the parole context.

12 10. Respondent denies that the Board's 2006 decision violated Montez's federal due  
13 process rights, was arbitrary, or was unsupported by any evidence.

14 11. Respondent affirmatively alleges that Montez references his plea agreement as  
15 background to the challenged hearing. However, to the extent that this Court interprets the plea  
16 agreement reference as a legal contention, Respondent affirmatively alleges that it is a state law  
17 claim that is untimely and not properly before this Court.

18 12. Respondent denies that clearly established federal law requires the Board to present  
19 evidence of an inmate's current dangerousness when denying parole. Respondent further denies  
20 that rehabilitation is the *Greenholtz* doctrine or that the case is clearly established federal law  
21 standing for the proposition that the focus of parole suitability is rehabilitation. Respondent  
22 affirmatively alleges that Montez's contentions about his Minimum Eligible Parole Date  
23 (MEPD) and credits are state law claims not properly before this Court and unrelated to review of  
24 the state courts' decisions.

25 13. Respondent denies that the commitment offense is not reliable evidence of Montez's  
26 unsuitability. Respondent affirmatively alleges that Montez cites no clearly established United  
27 States Supreme Court law and improperly re-characterizes the offense facts in support of this  
28 contention.

1       14. Respondent affirmatively alleges that Montez's claim that the Board found elements of  
2 first-degree murder apply to Montez's crime is a state law claim not property before this Court.

3       15. Respondent affirmatively alleges that Montez's contentions about the state courts'  
4 findings about his social history and prior crimes are state law claims not properly before this  
5 Court. (See Pet. at 23-24 (citing *In re Roderick*, 154 Cal. App. 4th 242 (2007).) To the extent  
6 that this Court interprets these contentions as federal claims, Respondent affirmatively alleges  
7 that Montez has not shown that the state court made unreasonable factual determinations.

8       16. Respondent denies that the state courts showed bias in their decisions. Respondent  
9 affirmatively alleges that Montez has failed to meet his burden of proof as to this contention.

10       17. Respondent affirmatively alleges that an evidentiary hearing is unnecessary. Montez's  
11 claims can be resolved on the existing state court record. *Baja v. Ducharme*, 187 F.3d 1075,  
12 1078 (9th Cir. 1999).

13       18. Respondent denies that Montez is entitled to an order requiring the Board to conduct a  
14 new hearing within ten days, fix Montez's term, and apply all excess custody credits unless there  
15 is no new evidence since the 2006 hearing. Respondent further denies that this proceeding  
16 affects any review by the Governor, or that Montez is entitled to an order preventing the  
17 Governor from considering Montez's case factors at any future review. The remedy is limited to  
18 the process that is due, which is a new Board hearing comporting with due process. *See, e.g.,*  
19 *Benny v. U.S. Parole Comm'n*, 295 F.3d 977, 984-85 (9th Cir. 2002) (a liberty interest in parole  
20 is limited by the Board's exercise of discretion, and a due process error does not entitle an inmate  
21 to a favorable parole decision).

22       19. Montez fails to state or establish any grounds for habeas corpus relief.

23       20. Except as expressly admitted in this Answer, Respondent denies the allegations of the  
24 Petition.

25 ///

26 ///

27 ///

28 ///



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Montez claims that the Board's 2006 decision finding him unsuitable for parole violated his  
4 due process rights. But Montez merely alleges a disagreement with the Board's decision, and  
5 fails to establish that the state court decisions denying his due process claims were contrary to, or  
6 an unreasonable application of clearly established federal law as determined by the United States  
7 Supreme Court, or were based on an unreasonable determination of the facts. Thus, there are no  
8 grounds for federal habeas relief.

9 **ARGUMENT**

10 **I.**

11 **MONTEZ HAS NOT SHOWN THAT HE IS ENTITLED TO RELIEF UNDER**  
12 **AEDPA.**

13 Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) a federal court  
14 may not grant a writ of habeas corpus unless the state court's adjudication was either: 1)  
15 "contrary to, or involved an unreasonable application of, clearly established Federal law, as  
16 determined by the Supreme Court of the United States;" or 2) "based on an unreasonable  
17 determination of the facts in light of the evidence presented at the State Court proceeding."  
18 28 U.S.C. § 2254(d)(1-2) (2000). Montez has not demonstrated that he is entitled to relief under  
19 this standard.

20 **A. Montez Has Not Shown that the State Court Decisions Were Contrary**  
21 **to Clearly Established Federal Law.**

22 As a threshold matter, the Court must decide what, if any, "clearly established Federal law"  
23 applies. *Lockyer v. Andrade*, 538 U.S. 63, 71 (2003). In making this determination, the Court  
24 may look only to the holdings of the United States Supreme Court governing at the time of the  
25 state court's adjudication. *Carey v. Musladin*, \_\_\_ U.S. \_\_\_, 127 S. Ct. 649, 653 (quoting  
26 *Williams v. Taylor*, 529 U.S. 362 (2000)). The only case in which the Supreme Court has  
27 addressed the process due in state parole proceedings is *Greenholtz*. *Greenholtz*, 442 U.S. 1.  
28 The Supreme Court there held that due process is satisfied when the state provides an inmate an

1 opportunity to be heard and a statement of the reasons for the parole decision. *Id.* at 16. “The  
2 Constitution does not require more.” *Id.*<sup>17</sup> No other Supreme Court holdings require more at a  
3 parole hearing.

4 Montez does not contest that he received the *Greenholtz* protections. (*See generally* Pet.)  
5 Because *Greenholtz* was satisfied and *Greenholtz* is the only Supreme Court authority regarding  
6 an inmate’s due process rights during a parole hearing, the state court decision upholding the  
7 Board’s decision was not contrary to clearly established federal law. Thus, the Petition should be  
8 denied.

9 Although Montez alleges that the Board’s decision must be supported by some evidence,  
10 there is no clearly established federal law applying this standard to parole decisions. The  
11 Supreme Court has held that under AEDPA a test announced in one context is not clearly  
12 established federal law when applied to another context. *Wright v. Van Patten*, \_\_\_ U.S. \_\_\_ 128  
13 S. Ct. 743, 746-47 (2008); *Schriro v. Landrigan*, \_\_\_ U.S. \_\_\_, 127 S. Ct. 1933 (2007); *Musladin*,  
14 127 S. Ct. at 652-54; *see also*, *Foote v. Del Papa*, 492 F.3d 1026, 1029 (9th Cir. 2007); *Nguyen*  
15 *v. Garcia*, 477 F.3d 716, 718, 727 (9th Cir. 2007); *Crater v. Galaza*, 491 F.3d 1119, 1122 (9th  
16 Cir. 2007). The Supreme Court developed the some-evidence standard in the context of a prison  
17 disciplinary hearing, *Superintendent v. Hill*, 472 U.S. 445, 457 (1985), which is a fundamentally  
18 different context than a parole proceeding. Because the tests and standards developed by the  
19 Supreme Court in one context cannot be transferred to distinguishable factual circumstances for  
20 AEDPA purposes, it is not appropriate to apply the some-evidence standard of judicial review to  
21 parole decisions.

22 While the Ninth Circuit has applied the some-evidence standard to parole decisions, this is  
23 improper under AEDPA, and the issue is currently pending before an en banc panel of the Ninth  
24 Circuit. *Hayward*, 527 F.3d 797. AEDPA does not permit relief based on circuit case law.

25  
26 1. The Supreme Court has cited *Greenholtz* approvingly for the proposition that the “level  
27 of process due for inmates being considered for release on parole includes an opportunity to be heard  
28 and notice of any adverse decision” and noted that, although *Sandin* abrogated *Greenholtz*’s  
methodology for establishing the liberty interest, *Greenholtz* remained “instructive for [its]  
discussion of the appropriate level of procedural safeguards.” *Austin*, 545 U.S. at 229.

1 *Crater*, 491 F.3d at 1123, 1126 (§ 2254(d)(1) renders decisions by lower courts non-dispositive  
 2 for habeas appeals); *Earp v. Ornoski*, 431 F.3d 1158, 1182 (9th Cir. 2005) (“Circuit court  
 3 precedent is relevant only to the extent it clarifies what constitutes clearly established law.” . . .  
 4 “Circuit precedent derived from an extension of a Supreme Court decision is not clearly  
 5 established federal law as determined by the Supreme Court.”); *Duhaime v. Ducharme*, 200 F.3d  
 6 597, 600-01 (9th Cir. 2000). Therefore, the Ninth Circuit’s use of the some-evidence standard is  
 7 not clearly established federal law and is not binding on this Court. *See, e.g., Biggs v. Terhune*,  
 8 334 F.3d 910 (9th Cir. 2003); *Sass*, 461 F.3d at 1128; *Irons v. Carey*, 505 F.3d 846, 851 (9th  
 9 Cir. 2007).

10 Montez contends that the Board’s decision was arbitrary and capricious. (Pet. at 5.) This  
 11 contention lacks merit. The Board’s findings and decision would be arbitrary if made seemingly  
 12 at random without individualized consideration of Montez’s case. Here, the Board individually  
 13 considered Montez’s pre- and post-conviction factors and therefore did not make arbitrary  
 14 findings or an arbitrary decision.

15 Similarly, Montez’s additional claim that the Board’s reliance on the commitment offense  
 16 violates due process finds no support in Supreme Court precedent. Although the Ninth Circuit  
 17 has suggested that this might amount to an additional due process claim, *Biggs*, 334 F.3d at 917,  
 18 because there is no clearly established federal law precluding reliance on unchanging factors  
 19 federal habeas relief is not available. 28 U.S.C. § 2254(d).

20 In sum, the only clearly established federal law setting forth the process due in the parole  
 21 context is *Greenholtz*. Montez does not allege that he failed to receive these protections.  
 22 Therefore Montez has not shown that the state court decisions denying habeas relief were  
 23 contrary to clearly established federal law.

24 **B. Montez Has Not Shown that the State Courts Unreasonably**  
 25 **Applied Clearly Established Federal Law.**

26 Habeas relief may only be granted based on AEDPA’s unreasonable-application clause  
 27 where the state court identifies the correct governing legal rule from Supreme Court cases but  
 28 unreasonably applies it to the facts of the particular state case. *Williams*, 529 U.S. at 406. The

1 petitioner must do more than merely establish that the state court was wrong or erroneous. *Id.* at  
 2 410; *Lockyer*, 538 U.S. at 75. Respondent recognizes that the Ninth Circuit applies the some-  
 3 evidence standard as clearly established federal law, but even accepting that premise, Montez is  
 4 not entitled to federal habeas relief. Indeed, the California Supreme Court has adopted *Hill*'s  
 5 some-evidence standard as the judicial standard to be used in evaluating parole decisions, *In re*  
 6 *Rosenkrantz*, 29 Cal. 4th 616 (2002), and Montez has not shown that the state courts  
 7 unreasonably applied the standard.

8 When, as here, the California Supreme Court denies a petition for review without  
 9 comment, the federal court will look to the last reasoned decision as the basis for the state court's  
 10 judgment. *Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991). In this case, the last reasoned  
 11 decision is the Los Angeles County Superior Court decision denying Montez's habeas petition.  
 12 (Ex. 2.) The superior court denied the petition and found that some evidence supported the  
 13 Board's denial. (Ex. 2 at 1.) Montez's claim fails: he has not shown that the superior court  
 14 unreasonably applied *Hill*, but rather asks this Court to re-weigh his suitability. Such a re-  
 15 weighing has no basis in United States Supreme Court law.

16 **C. Montez Has Not Shown that the State Court Decisions Were**  
 17 **Based on an Unreasonable Determination of the Facts.**

18 Under § 2254(d)(2), habeas corpus can not be granted unless the state courts' decisions  
 19 were based on an unreasonable determination of the facts in light of the evidence presented in the  
 20 state court. The state courts' factual determinations are presumed to be correct, and the petitioner  
 21 has the burden of rebutting that presumption by clear and convincing evidence. 28 U.S.C. §  
 22 2254(e)(1).

23 Although Montez alleges that the Board's decision is not supported by the evidence, he  
 24 does not show that the state court made factual errors. Here the superior court noted the facts of  
 25 the crime, then found that "there is some evidence to support the Board's finding that 'the motive  
 26 for the crime is inexplicable or very trivial in relation to the offense,'" and that "the record  
 27 reflects that petitioner had an unstable social history prior to the commitment offense, which is a  
 28 factor tending to indicate unsuitability for parole." (Ex. 2 at 1-2 (citations omitted).) Montez has

1 not alleged by clear and convincing evidence that the factual determinations are incorrect. He  
2 disagrees with the weight the Board assigned to the evidence. This disagreement does not entitle  
3 Montez to federal habeas relief.

4 **CONCLUSION**

5 Montez has not demonstrated that the state court decisions denying habeas relief were  
6 contrary to, or an unreasonable application of, United States Supreme Court authority, or based  
7 on an unreasonable determination of the facts. Thus, the Petition should be denied.

8 Dated: August 25, 2008

9 Respectfully submitted,

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Montez v. Curry**

No.: **U. S. D. C., N. D., S. F. DIV., C 08-0815 VRW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 25, 2008, I served the attached

**ANSWER TO ORDER TO SHOW CAUSE; MEMORANDUM OF POINTS AND  
AUTHORITIES WITH EXHIBITS 1 - 6**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Victor Montez, C-48215  
Correctional Training Facility  
P.O. Box 689  
Soledad, CA 93960-0689  
In Pro Per**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **August 25, 2008**, at San Francisco, California.

\_\_\_\_\_  
J. Baker

Declarant

\_\_\_\_\_  
  
Signature

**EXHIBIT 1**  
**Part 1 of 3**



MC-275

Name Victor M. MontezAddress Correctional Training FacilityP.O. Box 689 (ED-181L)Soledad, CA 93960CDC or ID Number C-48215

**FILED**  
Los Angeles Superior Court

JAN 02 2007

John A. Clarke, Executive Officer/Clerk

LOS ANGELES COUNTY SUPERIOR COURT

STATE OF CALIFORNIA

(Court)

By Joseph M. Pulido, Deputy  
JOSEPH M. PULIDO, S.C.C.  
233219

**VICTOR M. MONTEZ,**

Petitioner

vs.

**BEN CURRY (Warden),**

Respondent

## PETITION FOR WRIT OF HABEAS CORPUS

No. BACOF 424

(To be supplied by the Clerk of the Court)

## INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court (as amended effective January 1, 2005). Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

## This petition concerns:

- ☐ A conviction
 ☐ Parole  
☒ A sentence
 ☐ Credits  
☐ Jail or prison conditions
 ☐ Prison discipline  
☐ Other (specify): \_\_\_\_\_

1. Your name: Victor M. Montez
2. Where are you incarcerated? Correctional Training Facility, P.O. Box 689, Soledad, CA 93960
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

2nd degree murder w/use of a firearm

- b. Penal or other code sections: 187 / 12022.5
- c. Name and location of sentencing or committing court: Superior Court of California,  
County of Los Angeles
- d. Case number: LA A146105
- e. Date convicted or committed: March 26, 1982
- f. Date sentenced: May 21, 1982
- g. Length of sentence: 15 years to life plus 2 years firearm enhancement
- h. When do you expect to be released? To be determined
- i. Were you represented by counsel in the trial court? ☐ Yes. ☐ No. If yes, state the attorney's name and address:

N/A

4. What was the LAST plea you entered? (check one)

☐ Not guilty ☒ Guilty ☐ Nolo Contendere ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

N/A

6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

PLEASE SEE APPENDIX "A" PAGE 5 FOR ANSWERS TO 6, ET SEQ.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

PLEASE SEE APPENDIX "A" STARTING AT PAGE 5 FOR ANSWERS TO 6a

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

PLEASE SEE APPENDIX "B" STARTING A PAGE 16 FOR ANSWERS TO 6b

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☐ No. If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"): N/A
- b. Result: \_\_\_\_\_ c. Date of decision: \_\_\_\_\_
- d. Case number or citation of opinion, if known: \_\_\_\_\_
- e. Issues raised: (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
- f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known: N/A
9. Did you seek review in the California Supreme Court? ☐ Yes. ☐ No. If yes, give the following information:
- a. Result: \_\_\_\_\_ b. Date of decision: \_\_\_\_\_
- c. Case number or citation of opinion, if known: \_\_\_\_\_
- d. Issues raised: (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal: N/A
11. Administrative Review:
- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:
- THERE IS NO ADMINISTRATIVE REVIEW**
- b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No. N/A  
 Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or **issue** in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. a. (1) Name of court: \_\_\_\_\_
- (2) Nature of proceeding (for example, "habeas corpus petition"): \_\_\_\_\_
- (3) Issues raised: (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (4) Result (Attach order or explain why unavailable): \_\_\_\_\_
- (5) Date of decision: \_\_\_\_\_
- b. (1) Name of court: \_\_\_\_\_
- (2) Nature of proceeding: \_\_\_\_\_
- (3) Issues raised: (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (4) Result (Attach order or explain why unavailable): \_\_\_\_\_
- (5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

**No delay**

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

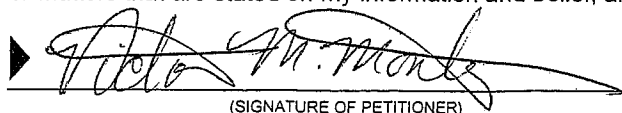
17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

24 Oct 2006

  
(SIGNATURE OF PETITIONER)

A P P E N D I X "A"

Answer to 6, et seq.

Claim I

IT WAS A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; VIOLATING PETITIONER'S PLEA AGREEMENT, TO FIND HIM UNSUITABLE FOR PAROLE FOR THE EIGHTH TIME AFTER TWENTY-FIVE YEARS BASED ON IMMUTABLE FACTORS WHEN THOSE FACTORS ARE NO LONGER RELIABLE EVIDENCE AND OTHER FINDINGS ARE NOT "CIRCUMSTANCES SPECIFIED BY STATUTE AND BY REGULATION"; THE DECISION BEING ARBITRARY AND AN ABUSE OF DISCRETION.

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Answers to 6a: Supporting facts

The Plea Agreement

On August 11, 1980, Victor Montez (hereafter Petitioner) was arrested for the murder of Michael Stewart, the murder occurring on August 10, 1980.

In an "information" alleging several charges, all of which but one were dropped (EXHIBIT 1), Petitioner was charged with "murder" in violation of Penal Code § 187.<sup>1/</sup> The charge being for the minimum elements of the offense, that is, Petitioner, "with malice aforethought (did) murder Michael Stewart, a human being."

On March 26, 1982, after being advised of his constitutional rights, primarily, to trial by jury, confront witnesses and cross-examination, and the right to present a defense (EXHIBIT 2, p. 4-5), Petitioner entered into a stipulated plea agreement, a contract, with the state of California to one count of second degree murder, that is, "did unlawfully kill another human being with malice aforethought" with the use of firearm in violation of Penal Code

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1. All codes and regulations are California, unless otherwise noted.

proffered that the murder of Mr. Stewart "was an unfortunate situation...that Mr. Montez never intended to kill the victim; that this was strictly an accident" (EXHIBIT 2, p. 9). There was no objection by the prosecution.

On March 26, 1982, Petitioner was sentenced to 15 years to life plus two years for the use of a firearm, to be served consecutively (EXHIBIT 3), being credited with 648 days in custody, plus 324 days good time credits, for a total of 972 days preconviction credit (EXHIBIT 4). A probation officer's report (POR) (EXHIBIT 5) was filed in conjunction with sentencing.

#### The Parole Hearing

On May 31, 2006, Victor Montez (hereafter Petitioner) appeared before the Board of Parole Hearings (hereafter Board) for his EIGHTH parole suitability hearing. Petitioner's minimum eligible parole date (MEPD) was fixed at April 9, 1990 (EXHIBIT 6, HT 1:7-16).<sup>2/</sup>

Petitioner was sworn to tell the truth (HT 8:3-7).

#### The commitment offense

The facts of Petitioner's commitment offense were read into the record, being taken from Petitioner's Life Prisoner Evaluation Report (LPER) from June 2002 (EXHIBIT 7), reading from the LPER at HT 8:17-9:26:

On August 9, 1980, Montez and two women, one of whom was his wife, were on their way to Oxnard when their vehicle became disabled. The two women began to hitchhike on the Ventura Freeway while Montez hid in the bushes. It was agreed that the two women would appear as two females stranded on the freeway while Montez would approach the motorist who stopped and exhibit a firearm he carried in his waistband. The victim, Michael Stewart stopped for the women. The women entered the rear seat while beckoning to Montez who was still hiding in the

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2. Reference to parole hearing transcript will be designated by HT followed by page and, when necessary, line number, e.g., (HT 1:1).



bushes. He ran to the car and brandished a small caliber firearm and entered the rear seat of the car. He pointed the firearm at the back of the victim's head and told him to drive them to Oxnard or he would kill him. Montez then fired, striking and killing the victim. Montez exited the car, dragged the body from the car and secreted the body beneath an overhanging tree and shrubs. After leaving the body, Montez, his wife and the other female companion drove the victim's car to Oxnard.

Petitioner "basically concurs with the report" (HT 10:3), with few exceptions; those exceptions being that "he never threatened the victim, in fact he offered the victim money for gas" (HT 10:4-6), Petitioner did have the gun pointed at the victim's head, but "believes the gun fired when the victim adjusted himself in the car seat and his elbow knocked the gun" (HT 10:6-11), Petitioner had no "intention to kill the victim" (HT 10:12-13), and "he never threatened the witness with violence if she contacted the police as is alleged" (HT 10:20-24). The facts of the offense are immutable and have remained consistent since the POR (EXHIBIT 5, pp. 6-10).

#### Prior criminal history

The Board reviews Petitioner's prior criminal history, starting with his juvenile record. Petitioner has no convictions as a juvenile (HT 11:16-24). As an adult, on April 26, 1973, given one year summary probation for entering non-commercial dwelling, while in custody for possession of marijuana charge, on October 19, 1973, convicted of sales and transportation of marijuana, January 7, 1974, Petitioner was convicted of "possession of marijuana and sent to CYA (HT 12:5-7), and has a conviction for "theft from motor vehicle" in the state of New Mexico, being released from custody on April 22, 1978 (HT 12:5-17; EXHIBIT 5, p. 5). None of Petitioner's prior convictions were serious or violent offenses.

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Prior social history

Petitioner began smoking marijuana at the age of 13, and started using heroin on weekends, progressing to a \$200 a day habit by the age of 15 and would take Valium when heroin was not available (HT 14:8-15:2).

Petitioner dropped out of school at age 16 and entered Job Corps, remaining there eleven months learning to operate heavy equipment (HT 15:3-14).

From the Job Corps, Petitioner entered the United States Army, serving as a paratrooper in the Special Forces, being honorably discharged in 1972 (HT 15:14-26). Petitioner stayed free of drugs while in the military and believes he should have stayed in the military (HT 16:1-4).

While incarcerated in New Mexico, Petitioner earned his GED (HT 16:6-7). Petitioner earned certification as a welder during that time, also (HT 16:9-10).

Petitioner lived with a woman for approximately one year in New Mexico (HT 16:11-13), then returned to California where he met and entered into a relationship with Denise Garcia, marrying her in April, 1980, assuming responsibility for her two children, then having a daughter together (HT 16:14-17). Petitioner is now a grandfather (HT 17:5-8), and although divorced from his wife, who was also his crime partner in the instant offense, remains in contact and has support of his children (HT 33:19-20).

Prior to the instant offense, Petitioner was employed as roofer (HT 18:2-10).

Petitioner believes he had a good family life growing up

(HT 18:21-24); there was no abuse in the home (HT 19:1-11).

Parole plans

Petitioner will parole to his mother's home in Oxnard, which she owns (HT 19:15-22), and she will help financially and in any way she can (HT 35:13-20). Petitioner has a firm offer of employment from Ideal Upholstery in Ventura where he will start at \$9.00 an hour (HT 20:6-20). Petitioner has alternative plans, arranging for an interview with a live-in program at the Ventura County Rescue Mission, with the requirements for admittance laid out for the Board (HT 22:23-23:13). Petitioner's daughter will provide housing, and, as her husband is starting his own business, the possibility of employment for Petitioner (HT 36:7-14).

Petitioner also has the support of Martha Duran, a woman whom he married while incarcerated, now divorced (due to the pressures of incarceration), residing in Oxnard and offering housing, and all the support "required so he can be a productive member of society" (HT 37:10-26), the Board finding this to be "very good" (HT 38:1).

Petitioner went to the effort to contact several organizations in the community that can provide housing and other services to re-enter society successfully, California Veterans Assistance, Luthern Social Services of Southern California, and New Directions of Los Angeles, as well as a pamphlet from Prison Industry Authority of job placement assistance and other services through parole services (HT 39:15-40:11).

Additionally, not only is Petitioner a certified welder and heavy equipment operator, but since being incarcerated, among other vocational trades, has obtained certification as a paralegal (HT 48:11-13).

Postconviction behavior

It was noted that Petitioner has been "extremely active" since his 2002 hearing (HT 24:18-20), having completed two certifications from Federal Emergency Management in Emergency Preparedness, and Radiological Emergency Management (HT 24:21-24). Petitioner received three laudatory chronos for participation in the Prison Industries Authority employability program (HT 24:24-27), and sixteen laudatory chronos for his continued participation in Alcoholics Anonymous and Narcotics Anonymous (HT 25:1-3).

Petitioner completed a thirteen week IMPACT workshop (a victim's awareness self-help group) (HT 25:9-11).

Although Petitioner has disciplinary write-ups, the last one being in 1993, "there are no write-ups for violence or weapons" (HT 25:24-25).

Petitioner has received "exceptional and above-average work reports" on his job in the furniture factory (HT 25:25-26:5).

Psychological evaluation

Petitioner's psychological evaluation, dated May 11, 2006 (EXHIBIT 8), was prepared by Dr. Macomber, one of the Board's own forensic experts. Highlighting relevant factors, the Board notes: "Dr. Macomber writes that in the past based upon your criminal history you had been diagnosed as having antisocial personality disorder. But at this point in your life there is no evidence of any antisocial thinking or values. That your values are solidly pro-social, you have deep feelings of concern and empathy toward others" and the diagnostic label of antisocial is no longer appropriate (HT 28:7-17; EXHIBIT 8, p. 2). Petitioner has a Global Assessment of Functioning

(GAF) Score of 90 (EXHIBIT 8, p. 3 [the highest score possible, relating to global social functioning]).

Most importantly, relating to current threat to public safety, covered at HT 28:26-29:20, Petitioner quotes directly from Dr. Macomber's evaluation (EXHIBIT 8, pp. 3-4), under assessment of dangerousness:

In considering potential for dangerous behavior when released to the community, the Level of Service Inventory-Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, institutional adjustment, social relationships and other factors to determine current risk on parole. He obtained a score of 5.1 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 95 of them. This is a low risk score. At this point in his life, due to maturity, growth, and increased insight, he poses no more risk to society than the average citizen in the community. In fact, based on the positive changes in his life, he probably poses less risk to society than the average citizen.

In response, the Board cogently stated: "That's a conclusion I won't disagree with but that's certainly open to discussion at some other time" (HT 29:20-22, emphasis added). The Board continues, "Under clinical observations and recommendations the doctor writes that prognosis for successful adjustment in the community is excellent" (HT 29:22-25; EXHIBIT 8, p. 4).

Correctional officials agree that Petitioner "would probably pose a low degree of threat to the public at this time, if released from prison" (EXHIBIT 7, p. 4, [that was two years prior]).

#### Opposition to parole

The deputy district attorney representing Los Angeles County, after reiterating the facts of the case (HT 41:20-44:18), believing Petitioner's substance abuse is merely in "institutional remission (HT 45:2-7), and being critical of Petitioner exercising his constitutional right not to discuss the case or incriminate himself, believing that demonstrates failure to accept responsibility for

the offense (HT 45:7-15), opposed parole (HT 45:20-21).

# D E C I S I O N

In concluding that Petitioner is "not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety" if released from prison (HT 53:12-15), the Board relied on the following findings:

1. The commitment offense, feeling "that the offense was carried out on an especially cruel manner" (HT 53: 21-22), stating the victim "was shot in the head after he stopped to render aid in what he thought were two individuals that were in distress along the side of the freeway" (HT 53:22-26); being "carried out in a very dispassionate and calculated manner" (HT 54:1-2), putting "the two women out on the freeway as a lure and that you were hiding in the bushes and unfortunately it was Mr. Stewart that was the first Samaritan that decided to stop and help. The victim was defiled after the offense in that he was stripped...(HT 54:3-12 [there is absolutely no evidence, and Petitioner denies, that Mr. Stewart was stripped of the clothing he was wearing, see EXHIBIT 1, pp. 6-7]); and the motive "was very trivial" (HT 54:14), in that the "worst case scenario you could have just ordered him out to the side of the freeway but that's neither here nor there at this point n time" (HT 54: 15-18). The Board then reread the statement of facts into the record (HT 54:21-56:3).

2. Prior criminal history, stating Petitioner had "an escalating pattern of criminal conduct and that you had failed previous grants of probation...previous attempts to correct your criminality through the CYA commitment" (HT 56:4-20), citing Petitioner's dismissed

charges and non-violent criminal convictions (HT 56:12-16).

3. Parole plans needed to be shored up, the Board completely ignoring the offer of residence and financial support from Petitioner's mother (HT 19:15-22) and confirmed job offer (HT 20:6-20), criticizing the halfway houses Petitioner contacted as not being satisfactory (HT 56:23-57:3), stating that Petitioner needs a backup plan with a member of his family, which he has, and being critical of the offer of residence and assistance from Ms. Duran whom Petitioner married and divorced while incarcerated (HT 57:21-23), finally stating "[i]t might be fine with the next Board but from my experience with the parole division they probably would not approve that" (HT 58:16-19).

4. "[T]he representative from the Los Angeles County District Attorney's Office indicating opposition to parole" (HT 58:2-5).

The only two factors considered in Petitioner's favor for parole suitability were: (1) "As far as your institutional behavior you have programmed very well" (HT 56:16-18); and (2) "[s]o far as the psychological report prepared by Dr. Macomber in May 1006, it's favorable" (HT 56:22-23). In reference to programming very well and Petitioner's long ago disciplinary write-ups, the Board stated: "They are not an issue at least with this panel and I can't see them being an issue with the next panel you come before" (HT 60:24-61:1).

The Board recommended that Petitioner "continue in your AA/NA, whichever is available, and continue to earn positive chronos" (HT 58:7-9).

#### C O N C L U S I O N

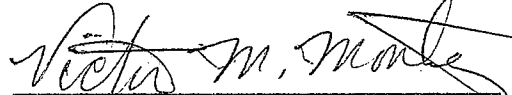
Based on the foregoing facts, court records and attached memorandum of law, it is respectfully requested that the Court issue



and Order to Show Cause why the writ should not be granted, and after Petitioner's term is fixed in accord with his personal culpability, why any excess credits should not be applied to any period of parole Petitioner may have to serve.

Date: 24 Oct. 2006

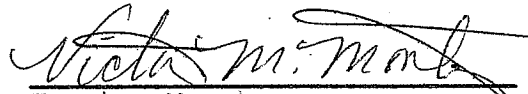
Respectfully submitted,



Victor Montez  
Petitioner in pro per

V E R I F I C A T I O N

I, Victor Montez, hereby declare under penalty of perjury that the foregoing facts are true and correct, and the exhibits in support of those facts are true copies thereof. Doing so the 24 day of October, 2006, at Soledad, California.



Victor Montez  
Petitioner in pro per

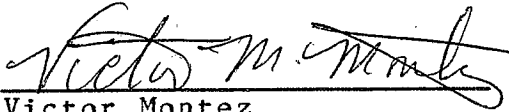
P R A Y E R   F O R   R E L I E F

I, Victor M. Montez, states that I am a prisoner of the state of California proceeding in pro per and have no relief save habeas corpus, and do thereby pray that this Honorable Court will:

1. Issue and Order to Show Cause;
2. Appoint Counsel to protect the rights of Petitioner;
3. Conduct an evidentiary hearing so that Petitioner can develop the pattern of arbitrary decisions in matters of parole suitability determinations, e.g., how the Board can agree with forensic experts then render a decision contrary to clearly established evidence;
4. Declare the rights of Petitioner;
5. Grant the writ;
6. Any other relief that will further justice and preserve the integrity of the Court.

Date : 24 Oct. 2006

Prayerfully submitted,



Victor Montez  
Petitioner in pro per

A P P E N D I X "B"M E M O R A N D U M O F L A WIntroduction

Petitioner respectfully presents to the Court his memorandum of law in support of his claims and facts. The issues presented are consistent with the Due Process Clause of the United States Constitution: Would the state's penological interest be served by continued imprisonment of a prisoner who has satisfied the spirit of the law and there is no evidence he is currently a threat to public safety?

The first argument presented is consistent with the recent decision in Hamdi v. Rumsfeld (2004) 542 U.S. 507, 124 S.Ct. 1633, clarifying the ambiguity of the "some evidence" standard in Superintendent v. Hill (1985) 472 U.S. 455, Hamdi being consistent with the Board's "preponderance of the evidence" standard found in California Code of Regulations, tit. 15 (hereafter Cal. Code Regs., tit. 15), § 2000(b)(50).

Petitioner will address his claims in the following order: a. "some evidence" standard verses "a preponderance of the evidence" standard; b. violation of plea agreement; c. failure to consider all relevant factors; d. opposition of district attorney not evidence; e. parole plans; f. use of nonviolent prior offenses; g. commitment offense no longer reliable evidence; and h. an accumulation of the evidence will show the hearing was a farce and a sham, the Board going in search of a pretext to justify a decision already made rather than an honest weighing of the evidence.

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Claim I

IT WAS A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; VIOLATING PETITIONER'S PLEA AGREEMENT, TO FIND HIM UNSUITABLE FOR PAROLE FOR THE EIGHTH TIME AFTER TWENTY-FIVE YEARS BASED ON IMMUTABLE FACTORS WHEN THOSE FACTORS ARE NO LONGER RELIABLE EVIDENCE AND OTHER FINDINGS ARE NOT "CIRCUMSTANCES SPECIFIED BY STATUTE AND BY REGULATION"; THE DECISION BEING ARBITRARY AND AN ABUSE OF DISCRETION.

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- a. Petitioner Has A Liberty Interest In Parole And Due Process Can Only Be Satisfied If The Administrative Level Review Is Supported By A Preponderance Of The Evidence.

This is strictly a question of law that can only be resolved by the Appellate Court, or California Supreme Court at the state level.

Relying on Superintendent v. Hill, supra 472 U.S. 445, the Rosenkrantz court held that the Due Process Clause is satisfied as long as the Board's/Governor's decision has "some basis in fact" and "some evidence" to support the decision (In re Rosenkrantz, supra, 29 Cal.4th, at 655-658). The "some evidence" standard, however, does not suggests how to apply itself when both the decision at the administrative level and judicial level of review is based on a "modicum of evidence." The Hill decision was ambiguous, but that ambiguity was cleared up in the recent United States Supreme Court decision of Hamdi v. Rumsfeld, supra, 542 U.S. 507, 124 S.Ct., at 2651 [The "some evidence" standard applies to judicial review after an administrative review in which "a preponderance of the evidence" standard is applied.] For a thorough analysis of Hamdi in the context of prison disciplinary determinations, see the Minnesota Supreme Court's discussion of Carrillo v. Fabian (2005) 701 N.W.2d 763 (EXHIBIT 9).

A parole suitability hearing is not a disciplinary hearing conducted by "correctional officials" but is "analogous to the sentencing determination made by the court" (In re Roberts (2005) 36 Cal.4th 575, 577-588). Indeed, Penal Code § 3041.5 affords prisoners appearing before the Board for a suitability hearing rights not afforded at disciplinary hearings and the objectives are completely different -- one is punishment for violating prison rules while the other results in freedom. One is presumed suitable for parole and parole "shall be granted" absent the prisoner being a current threat to public safety.

In light of Hamdi v. Rumsfeld, supra, 542 U.S. 507, it is posited: If terrorists, who are enemy combatants of the United States and not even citizens of this country, are entitled to "a preponderance of the evidence" standard at the administrative level, then are not indeterminately sentenced prisoners who are presumed suitable for parole entitled to no less? Especially when the Board's own regulations mandate that the Board's decisions must be supported by "a preponderance of the evidence" (Cal. Code Regs., tit. 15, § 2000(b)(50)). If the Board's decision only need be supported by "some evidence," and judicial review only need to look for "some evidence" to support the Board's/Governor's decision, where is the safety net when the "some evidence" standard does not suggest how to apply itself? It is time the courts revisit the Board's decisions being supported by a mere, and abused "some evidence" standard.

- b. Petitioner Pled Guilty To The Minimum Elements Of The Offense And Has An Expectation To Be Punished Within The Legislatively Prescribed Punishment For Second Degree Murder.

Indeterminately sentenced prisoners in this state have a "liberty

interest" in parole and "an expectation that [they] will be granted parole unless the Board finds, in the exercise of its discretion, that [the prisoner is] unsuitable for parole in light of the circumstances specified by statute and regulations" (In re Rosenkrantz (2002) 29 Cal.4th 616, 654; see also In re Dannenberg (2005) 34 Cal.4th 1061, 1094 [Dannenberg "does not contravene Rosenkrantz"]). Petitioner has a heightened expectation of parole in that he entered into a contract with the state for second degree murder and pleading guilty only to the minimum elements of the offense.

A plea of guilty is only an admission to the elements of the offense as charged, not as it might have been charged (People v. Jerome (1984) 160 Cal.App.3d 1087, 1096; Henderson v. Morgan (1976) 426 U.S. 637, 647 fn. 18; Apprendi v. New Jersey (2000) 530 U.S. 466, 526-528, Justice O'Connor, dissenting; United States v. Wuco (9th Cir. 1976) 535 F.2d 1200, 1202 fn. 1 [it is the statement of facts in the pleading, rather than the statutory citation that is controlling])). The information charged the minimum elements of the offense, murder of a human being "with malice aforethought" (EXHIBIT 1). Petitioner pled guilty to exactly that and no more (EXHIBIT 2, p. 6:13-19; 7:18-22).

"A plea agreement is, in essence, a contract between the defendant and the prosecutor to which the court consents to be bound" (People v. Cunningham (1996) 49 Cal.4th 1034, 1047). "'Plea agreements are contractual in nature and are to be measured by the contract standards'" (Brown v. Pool (9th Cir. 2003) 337 F.3d 1155, 1159, quoting United States v. De La Fuente (9th Cir. 1993) 8 F.3d 1333, 1337). "[W]hen a plea rests in any significant degree on a

promise or agreement of the prosecutor, so that it can be said to be a part of the inducement or consideration, such promise must be fulfilled" (Santobello v. New York (1971) 404 U.S. 257, 262). If the language of the contract is ambiguous, it must be interpreted to the benefit of the defendant as he understood it (Buckley v. Terhune (9th Cir. 2006) 441 F.3d 688, 695).

It was after this preliminary issues in this case were decided by the appellate court that the prosecution entered into negotiations with counsel in this case. In that Petitioner has always claimed his gun went off accidentally, and when this was presented in open court (EXHIBIT 2, p. 9:9-11; 22-23), the prosecution did not object in any manner; therefore, agreeing. If the state charges and agrees to a plea of second degree murder, the defendant waiving his rights to constitutional safeguards of a trial and a challenge of the evidence, then the state too waives its right to try the case years later before the Board as a first degree murder where Petitioner does not have the constitutional safeguards of a trial. If the prosecution can dupe a defendant into waiving his constitutional rights and plead guilty to second degree murder to save the expense of a trial, then later at a parole hearing try the case as first degree murder, what then was the purpose of the plea bargain? In such a situation it is impossible to conclude that Petitioner's plea was "voluntary" (Henderson v. Morgan, supra, 426 U.S., at 646). If the district attorney foresaw this and secretly left this possibility open and gave away nothing in exchange for this plea, then he would have betrayed the ethical duty as a representative of the government to conduct the government's business fairly and



(HT 54:3-12). Firstly there is no evidence that Mr. Stewart was stripped of the clothing he was wearing, thus there is no evidence that he was "defiled." Moreover, if that were true, saying removing someone's clothing is a thin attempt to bootstrap such an act to "abused, defiled, or mutilated" which conveys an actual defiling of the body, e.g., "The multiple stab wounds to Mrs. La Bianca's lower and back and buttocks made by Van Houton constituted at least a gratuitous mutilation, as did the fork in Mr. La Bianca's stomach and the knife through his throat" (In re Van Houten (2004) 116 Cal.App.4th 339, 351), Van Houten stating "'she had stabbed a woman who was already dead, and that the more she did it the more fun it was'" (Id., at 346, citation).

In support of the motive being "very trivial" (HT 54:14), this finding was based on the victim could have just been ordered out of the car and left along the freeway. Like the Board stated, however, "but that's neither here nor there at this point in time" (HT 54:15-18). Again, although the idea of forcing Mr. Stewart at gun point to give Petitioner and his accomplices a ride was intentional, the shooting of Mr. Stewart was an accident, thus there was no motive. Moreover, "there is no motive for unlawfully taking the life of another human being that could not be deemed 'trivial.' The Legislature has foreclosed that approach, however, by declaring that murderers with life sentences must 'normally' be given release dates... (In re Scott I, supra, 119 Cal.App.4th, at 893). Motive, too, is an immutable factor, and one that could be used forever to keep Petitioner in prison. Use of this immutable factor after a quarter century was an abuse of discretion, violating Petitioner's

honestly (In re Ibarra (1983) 34 Cal.3d 277, 289 [invalid and illusory concessions offered by the state "constitutes a species of fraud"; see also Santobello v. New York, supra, 404 U.S., at 261 [plea bargain contracts "presuppose fairness is securing agreement between an accused and a prosecutor"])).

Although Petitioner was not given a specific date, he did enter into this contract with an expectation of being punished for second degree murder, not first degree murder. Petitioner pled guilty to second degree murder and has exceeded the maximum legislatively prescribed punishment for second degree murder established in Cal. Code Regs., tit. 15, § 2403(c), 21 years, and now, with conduct credits, has exceeded the legislatively prescribed range of punishment for first degree murder, Cal. Code Regs., tit. 15, § 2403(b), 33 years. In fact, the facts and manner of death in case at bench calls for punishment of 18-19-20 years (Cal. Code Regs., tit. 15, § 2403(c)(III-B, no prior relationship and death almost immediate), and with conduct credits, 25 calendar years plus 9 years for conduct credits (8 years plus 1 year Monigold credits), Petitioner has served 34 years, in which his offense, if convicted of first degree murder, would be 28-29-30 years. Aside from Petitioner's contract with the state to be punished for second degree murder, for Petitioner to now be found unsuitable for parole based on the commitment offense, the offense must be "particularly egregious" for a first degree murder (In re Rosenkrantz, supra, 29 Cal.4th, at 689-690, concurring opinion by Moreno, J.). The manner of death in case at bench was a single, accidental, gunshot to the head, not "severe trauma" or "torture." In that the forensic evidence establishes Petitioner is not "presently

too dangerous to grant a fixed parole release date" (In re Dannenberg, supra, 32 Cal.4th, at 1080), and Petitioner has more than fulfilled his end of the contract, it was a violation of Petitioner's right to due process for the Board, representative of the state, to continue his imprisonment on the pretext that he is currently a threat to public safety. This is especially so and a gross abuse of discretion when the forensic expert states Petitioner "probably poses less risk to society than the average citizen" and the Board responds "[t]hat's a conclusion I won't disagree with" (HT 29:18-22).

c. The Board Failed To Consider All Relevant And Reliable Information

"The gravity of the commitment offense may be a sufficient basis for denying a parole application, so long as the Board does not fail to consider all other relevant factors" (In re Scott II (2005) 113 Cal.App.4th 573, 595 [emphasis added by the court, quoting In re Ramirez (2001) 94 Cal.App.4th 549, 569]; see also In re Rosenkrantz, supra, 29 Cal.4th, at 655 [the Board must consider all relevant factors])). In case at bench, not only did the Board, after agreeing with the forensic expert that Petitioner is no longer a threat to public safety (HT 29:18-22) rule contrarily, but the Board did not weigh several suitability factors pertinent to Petitioner's suitability for parole (Cal. Code Regs., tit. 15, § 2402(d)), making its decision by viewing the commitment offense in a vacuum.

There are nine (9) factors that weigh in favor of suitability for parole (Cal. Code Regs., tit. 15, § 2402(d)). Two of the nine are inapplicable to Petitioner, the Board failed to consider and weigh in Petitioner's favor: (1) "The prisoner does not have a record of assaulting others as a juvenile or of committing crimes with a

potential of personal bodily harm [Petitioner has no juvenile convictions, EXHIBIT 5, p. 4]; (2) "The prisoner has experienced reasonably stable relationships with others" [Petitioner has maintained stable relationships with his family, ex-wife, and children, as well as others; (3) "Signs of Remorse," Petitioner "indicating that he understands the nature and magnitude of the offense" (HT 52:5-14; EXHIBIT 8, p. 3); (4) motivation for the crime will be addressed below; (5) battered woman syndrome not applicable; (6) "The prisoner lacks any significant history of violent crime." This, with the unsuitability factor, "The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim" (Cal. Code Regs., tit. 15, § 2402(c)(2)), weigh in Petitioner favor as he has never been convicted of a violent or serious offense (EXHIBIT 5, pp. 4-5); and (7), Petitioner's age, currently 53 years old "reduces the probability of recidivism." Those regulatory factors absolutely were not considered, violating Petitioner's right to due process.

As to suitability factor 8, in spite of reading letters of support from Petitioner's mother offering housing and financial support (HT 19:15-22) and having a firm job offer (HT 20:6-20), and additional offers of support from family member, definitely falling under "realistic plans for release" (Cal. Code Regs., tit. 15, § 2402(d)(8)), the Board criticized Petitioner's correspondence with halfway houses and offer of residence and assistance from his ex-wife (HT 56:23-57:23), telling Petitioner he needs a backup plan with a member of his family. Is not Petitioner's mother a member of his family?

As to suitability factor nine, the only factor the Board did consider was (Cal. Code Regs., tit. 15, § 2402(d)(9) ["Institutional activities indicate an enhanced ability to function within the law upon release"]), the Board did cover and commend Petitioner for his postconviction behavior and participation in activities, or at least Petitioner's efforts were given lip service as there is no evidence in the decision that this factor was actually considered and weighed in Petitioner's favor (see In re Ramirez, supra, 94 Cal.App.4th, at 571-572). Failure to consider all relevant and reliable factors violated Petitioner's right to due process (In re Scott I (2004) 119 Cal.App.4th 871, 898; In re Ramirez, supra, 94 Cal.App.4th, at 571-572).

d. Opposition By District Attorney's Office Is Not Evidence Of Unsuitability For Parole Unless The Evidence Is Postconviction And Current.

The Board cited the Los Angeles District Attorney's Office opposition to parole as a reason to find Petitioner a current threat to public safety (HT 58:2-5). This is not a factor to be considered.

Both state and federal courts have held that opposition by the district attorney is not a factor within the regulations and guidelines upon which the Board can use to deny parole (Rosenkrantz v. Marshall (C.D. Cal. 2006) \_\_\_\_ F.Supp.2d \_\_\_\_, 2006 WL 2327085, \*12, fn. 14; In re Samble, 2006 WL 401282, \*9 [although the Board is to consider comments by the district attorney, nowhere in the statutes or regulations is it supported that parole may be denied, or granted, based on the position of the district attorney. The district attorney's comments of the offense are merely accumulative of immutable factors that lose relevance and reliability over time

against positive progress in prison])). Thus, it was arbitrary to rely on opposition from the District Attorney's office to find Petitioner unsuitable for parole.

e. It Was An Abuse Of Discretion To Deny Petitioner Parole Based On His Parole Plans.

Cal. Code Regs., tit. 15, § 2402(d)(8) state: "The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release." In support of finding Petitioner unsuitable for parole on this factor, the Board stated paroling to Ms. Duran's, Petitioner's ex-wife's residence was unacceptable and Petitioner "would better be served with family members" (HT 57:21-24). Petitioner needs a backup plan with a family member (HT 57:4-6). This finding is totally contrary to the evidence.

In support of parole, when reviewing Petitioner's parole plans, he presented letters of support from family members, including his mother, who offered housing and financial support (HT 19:15-22). In addition, Petitioner has a firm job offer (HT 20:6-20), and additional offers of support from family members, to include his daughter (HT 36:7-22). As a "backup plan" Petitioner received correspondence from halfway houses (HT 39:23-27).

It is beyond comprehension how the Board can read letters of support into the record from Petitioner's mother offering residence and financial assistance, as well as letters from other family members, then in the decision turn around and tell Petitioner his parole plans are insufficient because he needs a "backup plan" with family members. Once again proving the decision to find Petitioner unsuitable for predetermined then going in search of a pretext to justify a decision already made, being a farce and a sham, violating

Petitioner's right to due process.

f. Petitioner's Non-Violent And Non-Serious Convictions Are Not Evidence Upon Which Parole Can Be Denied.

Under suitability factors to be considered, Cal. Code Regs., tit. 15, § 2402(d)(1) states: "The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims." And § (6) states: "The prisoner lacks any significant history of violent crime." Conversely, under unsuitability factors to be considered, Cal. Code Regs., tit. 15, § 2402(c)(2) states: "The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim." Clearly, the regulations provide a finding of unsuitability if a prisoner has a history of committing violent crimes, especially if those crimes started early in life. Petitioner has no such history (EXHIBIT 5, pp. 4-5).

Petitioner has no prior convictions for a violent or serious offense (EXHIBIT 5, pp. 4-5). Petitioner was counseled and released once as a juvenile for malicious mischief, and arrested for marks on his, which was dismissed. Petitioner's adult arrests consist of: twice for burglary, both times dismissed; and battery, dismissed. Petitioner's convictions consist of: theft from an automobile; entering a non-commercial dwelling; one burglary with drug related offenses, being committed to California Youth Authority; and another drug related offense. None of these offenses involved Petitioner inflicting or attempting to inflict serious injury on a victim. The convictions listed above do not demonstrate a significant history of violent crime. "[T]here is nothing in the governing statutes or regulations to support the [Board's] reliance on [Petitioner's]



non-violent criminal record" (In re Mark Smith (2003) 109 Cal.App.4th 489, 505).

Moreover, simply being arrested does not, by itself, constitute reliable evidence of criminal misconduct. Arrests alone are not reliable evidence that the accused committed the crime charged. As one court explained: "Arrests, juvenile dispositions short of [an] adjudication, and the like, can be extremely misleading and damaging if presented to the court as part of a section of the [probation] report which deals with past convictions" (People v. Calloway (1974) 37 Cal.App.3d 905, 908). Like any criminal defendant, Petitioner is, and was, presumed innocent until proven otherwise (Penal Code § 1096). This presumption of innocence is a fundamental principle of our criminal justice system" (Estelle v. Williams (1976) 425 U.S. 501, 503). The Board cannot, silently, try Petitioner for dismissed charges then use those charges to deny him parole. This finding is nothing but more fluff to add to an already flawed decision, further demonstrating the farce and sham, violating Petitioner's right to due process.

g. The Commitment Offense Is No Longer Reliable Evidence In Predicting Current Or Future Threat To Public Safety.

In reviewing this claim we must not lose sight of the fact that the Board agreed with their own forensic experts when concluding: Petitioner, if released from prison today, "probably poses less risk to society than the average citizen (HT 29:18-20); the Board responding, "That's a conclusion I won't disagree with" (HT 29:20-22).

The only statutory reason to deny Petitioner parole is the "timing and gravity" of the offense (Penal Code § 3041(b)). Our Supreme Court has taken this to mean an indeterminately sentenced



prisoner is to be granted parole unless the prisoner "is presently too dangerous to grant a fixed parole release date" (In re Dannenberg, supra, 34 Cal.4th, at 1080), the "abiding concern that the Board not schedule the release of any life-maximum prisoner who is still dangerous" (Id., at 1088).

In finding Petitioner unsuitable for parole based on the commitment offense a quarter century after the fact it appears the Board was relying on Cal. Code Regs., tit. 15, § 2402(c)(1)(B),(C), and (E), respectively: "The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder"; "The victim was abused, defiled or mutilated during or after the offense"; and "the motive for the crime is inexplicable or very trivial in relation to the offense."

In support of the offense being "carried out in a very dispassionate and calculated manner," the Board cited that the victim "was shot in the head after he stopped to render aid in what he thought were two individuals that were in distress along the side of the freeway" (HT 53:21-26). Petitioner has always maintained, and presented at his sentencing going uncontested by the prosecution, that he never intended to kill Mr. Stewart and the shooting was an accident. There is no evidence otherwise. Regardless, this is an immutable factor that will never change and is not to be viewed and weighed as though the offense happened yesterday how Petitioner was a quarter century ago, but who he is today and his current threat to public safety.

In support of the victim being "defiled," the Board found this defilement took place when the victim was stripped of his clothing

right to due process.

Every crime will have unique facts. Merely reciting those facts, as a prelude to expressions of moral outrage, does not amount to "a preponderance of the evidence" or even "some evidence." The length of time Petitioner has already served, 25 years, combined with custody credits, exceeds the matrix for first degree murder. Regardless of the fact that Petitioner pled guilty to the minimum elements of the offense, once a petitioner convicted of second degree murder "reaches that point" in time such that he would be "eligible for parole if he had been convicted of first degree murder" it is necessary to "consider his offense would still be considered especially egregious for a first degree murder" (In re Rosenkrantz, supra, 29 Cal.4th, at 690, J. Moreno concurring, emphasis in original). The evidence in case at bench suggests Petitioner's intent to force a ride at gunpoint and the shooting was accidental. Such an accidental shooting is no more than the absolute minimum necessary to support the conviction, for which Petitioner was charged and plead guilty to.

Petitioner's offense is not "particularly egregious" for a first degree murder, much less a second degree murder. When one considers Rosenkrantz as a guidepost, the facts so well known they need not be repeated here, and 21 years after his offense, a day apart both a federal district court and a state court held enough is enough, then after 25 years in case at bench, crime for crime, enough is enough.

The commitment offense after twenty-five years, a quarter of a century, a generation, is not reliable evidence of Petitioner's

current threat to public safety (In re Scott II, supra, 133 Cal.App.4th, at 595; Biggs v. Terhune (9th Cir. 2003) 334 F.3d 910, 916-917; Irons v. Warden of California State Prison-Solano (E.D. Cal. 2005) 358 F.Supp.2d 942, 947 fn. 2; Martin v. Marshall (N.D. Cal. 2006) 431 F.Supp.2d 1038, 1047-1048; Sanchez v. Kane (C.D. Cal. 2006) \_\_\_\_ F.Supp.2d \_\_\_\_, 2006 WL 2252640, \*11; Rosenkrantz v. Marshall (C.D. Cal. 2006) \_\_\_\_ F.Supp.2d \_\_\_\_, 2006 WL 2327085, \*16-17). The facts of the offense and motive will never change and Petitioner's liberty should not lie on the chance that some Board in the future might find the offense and motive not so bad.

The decision to find Petitioner unsuitable for parole, in light of the Board agreeing with the forensic experts that he is probably less a threat to public safety than the average citizen in the community, was arbitrary and an abuse of discretion, violating his right to due process, reducing the hearing to a farce and a sham.

h. Evidence The Decision Denying Parole Was A Farce And A Sham.

The decision to deny parole must be based on an honest assessment of the statutes and regulations (In re Rosenkrantz, supra, 29 Cal.4th at 654). An over view of the evidence and decision: (1) the Board's own forensic experts concluding that Petitioner is less a threat to public safety than the average citizen in the community and agree with that conclusion; (2) the Board's regulations clearly stating that only a prior history of violent offenses are unsuitability factors but using non-violent convictions; (3) the evidence presented clearly establishing that Petitioner's parole plans include support from his mother and family then the Board finding that he needs "backup parole plans" with family members; (4) the Board stating

that Petitioner's ancient history of disciplinaries was not a factor for them but may be a factor for the next panel; (5) this Board did not approve of his parole plans but the next Board may; (6) denying parole because the district attorney opposed parole when that is not only a factor but others are granted parole when the district attorney opposes parole, and (7) the Board failed to consider all relevant and reliable information and factors, the decision was arbitrary, the Board disregarding its own regulations to justify a decision already made, violating Petitioner's right to due process. "Not only is a biased decision-maker constitutionally unacceptable but 'our system of laws has always endeavored to prevent even the probability of unfairness'" (Martin v. Marshall, supra, 431 F.Supp.2d, at 1049, quoting In re Murchison (1955) 349 U.S. 133, 136).

Petitioner is entitled to have his parole suitability determined by a Board free from bias or prejudice (O'Bremski v. Maass (9th Cir. 1990) 915 F.2d 418, 422), not by a Board that has a hidden political agenda, violating Petitioner's right to due process.

#### C O N C L U S I O N

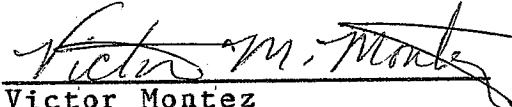
Parole decisions turn on a "discretionary assessment of a multiplicity of imponderables, entailing primarily what a man is and what he may become rather than simply what he has done" (Greenholtz v. Inmates of Nebraska Penal and Correctional Institute (1979) 442 U.S. 1, 10, citation). Additionally, "[T]he behavior record of an inmate during confinement is critical in the sense that it reflects the degree to which the inmate is prepared to adjust to parole release" (Id., at 15). The Board's decision was not only fixated on immutable factors a quarter century in the past, being

historical relics, but the Board presented no contravening evidence to the psychological forensic experts finding that Petitioner would not pose a threat to public safety if released from prison at this time, nor did the Board make any rational connections between its findings and Petitioner's present threat to public safety.

WHEREFORE, it is respectfully requested that this Court order the respondent to show cause why the writ should not be granted and Petitioner's term fixed, and, why any excess credits should not be applied to any time of parole he may serve.

Date: 24 Oct. 2006

Respectfully submitted,

  
Victor Montez  
Petitioner in pro per

**EXHIBIT 1**  
**Part 2 of 3**

**EXHIBIT "1"**

255

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

The People of the State of California,  
Plaintiff,

No. A146105

VICTOR MANUEL MONTEZ  
and  
DENISE MARIE MONTEZ,  
Defendants

**INFORMATION**

MURDER (Sec. 187, P.C.) - Ct. I  
ROBBERY (Sec. 211, P.C.) - Ct. II  
ATTEMPTED KIDNAPPING (Sec. 664/209,  
P.C.) - Ct. III

The said VICTOR MANUEL MONTEZ and DENISE MARIE MONTEZ  
are  
accused by the District Attorney of and for the County of Los Angeles, State of California, by this  
information, of the crime of MURDER, in violation of Section 187, Penal Code of  
California,  
a felony, committed as follows: That the said VICTOR MANUEL MONTEZ and DENISE MARIE MONTEZ

on or about the 10th day of August, 1980, at and in the County of Los Angeles, State of California,  
did willfully and unlawfully, and with malice aforethought murder Michael Stewart, a  
human being.

It is further alleged that the murder of Michael Stewart was committed by  
defendant VICTOR MANUEL MONTEZ while the defendant was engaged in the com-  
mission of robbery in violation of Penal Code Section 211 within the meaning  
of Penal Code Section 190.2(a)(17).

It is further alleged that the murder of Michael Stewart was committed by  
defendant DENISE MARIE MONTEZ while defendant was an accomplice in the com-  
mission of robbery in violation of Penal Code Section 211, within the meaning  
of Penal Code Section 190.2(a)(17).

It is further alleged that the murder of Michael Stewart was committed by  
defendant VICTOR MANUEL MONTEZ while the defendant was engaged in the attempted  
commission of kidnapping in violation of Penal Code Sections 207 and 209,  
within the meaning of Penal Code Section 190.2(a)(17).

SEE SPECIAL ALLEGATIONS CONTINUED ON ATTACHED SHEET

Filed in open Superior Court of the State of  
California, County of Los Angeles, on motion  
of the District Attorney of said County.

DATED:

JOHN J. CORCORAN, Clerk

By

Deputy

JOHN K. VANDE KAMP, District Attorney  
for the County of Los Angeles, State of California  
By \_\_\_\_\_

Deputy

761550A2-Rev. 7-77-PS 8-77

Filed in open Superior Court of the State of  
California, County of Los Angeles, on motion  
of the District Attorney of said County.

DATED:

JOSEPH B. BUECH, District Attorney  
for the County of Los Angeles, State of California  
By \_\_\_\_\_

Deputy



**EXHIBIT "2"**

ORIGINAL FILED

APR 15 1982

COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NW R

HON. DAVID A. HOROWITZ, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
Plaintiff, )

vs. )

VICTOR MANDEL MONTEZ,  
DENISE MARIE MONTEZ,

Defendants. )

NO. A 146 105

PLEA

VAN NUYS, CALIFORNIA; FRIDAY, MARCH 26, 1982; 9:25 A.M.

Upon the above date, the defendants being present in court and represented by counsel, CARL BURKOW, Esq. representing defendant Victor, IRVIN PRANSKY, Deputy Public Defender of the County of Los Angeles representing defendant Denise, the People being represented by IRVIN COHEN, Deputy District Attorney of the County of Los Angeles, the following proceedings were held:

(Bonnie Frankfurt, Official Reporter, CSR #2312.)

THE COURT: 203, 204, Victor Montez and Denise Marie

1 Montez.

2 MR. PRANSKY: Your Honor, at this time I believe the  
3 District Attorney has gotten together and has understood what  
4 the plea agreement is.

5 MR. COHEN: That is correct. I have conferred with Mr.  
6 Weisberg and it is my understanding that --

7 THE COURT: Can you hear?

8 A DEFENDANT: Not that good.

9 THE COURT: Speak up, Mr. Cohen.

10 MR. COHEN: Yes, Your Honor.

11 Since the matter was previously called, I have  
12 discussed the case with Mr. Weisberg who is the trial Deputy  
13 District Attorney.

14 It is my understanding that it is agreeable  
15 with the People that if the defendant Victor Montez withdraws  
16 his previous plea of not guilty to a violation of Section 187  
17 of the Penal Code, that being the charge of murder, and enters  
18 a guilty plea to that charge as murder in the second degree  
19 and admits the use of a firearm, to-wit, a handgun, that this  
20 would be agreeable with the People.

21 The defendant's exposure to time in custody would  
22 be from 17 years to life.

23 As to the defendant Denise Maria Montez, it is  
24 the People's intention to add an additional count, violation of  
25 Section 32 of the Penal Code, accessory after the fact.

26 It is my understanding the defendant Denise  
27 Montez will enter a plea of guilty to that charge.

28 The maximum exposure to time in custody for



that charge is an open plea, and the maximum time she can serve is up to three years in the State Prison, the sentence being up to the court.

Have I accurately outlined the disposition of this case, Mr. Pransky?

MR. PRANSKY: Yes.

MR. COHEN: Mr. Burkow?

MR. BURKOW: Yes.

MR. COHEN: Mr. Montez, did you understand what I said concerning the disposition of this case?

DEFENDANT VICTOR MONTEZ: Yes, sir, I did.

MR. COHEN: Is it your desire to enter a plea as I outlined in the disposition?

DEFENDANT VICTOR MONTEZ: Yes, sir.

MR. COHEN: At this time do you withdraw your previous plea of not guilty to the murder charge so you can enter this plea?

DEFENDANT VICTOR MONTEZ: Yes, sir.

MR. COHEN: Has anyone made any other promises to you other than what I have said in open court to get you to enter this guilty plea?

DEFENDANT VICTOR MONTEZ: No, sir.

MR. COHEN: Mr. Pransky, may it be stipulated that an additional count be alleged as to your client, a violation of Section 32 of the Penal Code, that being the felony of accessory after the fact?

MR. PRANSKY: So stipulated.

MR. COHEN: Waive further reading of the amendment and

1 statement of rights as to the amendment?

2 MR. PRANSKY: So waive further reading.

3 MR. COHEN: Denise Montez, do you understand what I  
4 said as to the disposition of this case concerning yourself?

5 DEFENDANT DENISE MONTEZ: Yes.

6 MR. COHEN: Is that your desire to proceed in that  
7 manner?

8 DEFENDANT DENISE MONTEZ: Yes.

9 MR. COHEN: Has anyone made any other promises to you  
10 other than what I have said in open court to get you to enter  
11 this guilty plea?

12 DEFENDANT DENISE MONTEZ: No.

13 MR. COHEN: I must advise each of you that if you are  
14 not citizens of the United States that the entry of these guilty  
15 pleas may have the consequences of deportation, exclusion from  
16 admission to the United States or denial of naturalization  
17 pursuant to the laws of the United States.

18 If you are citizens of the United States, this  
19 would not apply to you.

20 Further, in order for each of you to enter  
21 these guilty pleas you must know, understand and give up certain  
22 constitutional rights.

23 Each of you have the right to a trial by jury.  
24 or, if both sides agree, you can have a trial by the judge.

25 Each of you have a right to confront witnesses  
26 against you in open court and have your attorneys cross-examine  
27 these witnesses.

28 Each of you have a right to present a defense



by having witnesses brought into court who would testify for you by using the subpoena powers of the court at no cost to either of you.

Finally, each of you have the right against self-incrimination. This means that neither of you have to say anything against yourself.

Now, Mr. Victor Montez, have you discussed all these rights with your attorney Mr. Burkow?

DEFENDANT VICTOR MONTEZ: Yes, sir, I have.

MR. COHEN: After discussing these rights with Mr. Burkow, do you believe you understand them?

DEFENDANT VICTOR MONTEZ: Yes, sir.

MR. COHEN: Understanding these rights and knowing that you must give them up in order to enter this guilty plea, do you give up these rights?

DEFENDANT VICTOR MONTEZ: Yes, sir.

MR. COHEN: Mr. Burkow, join?

MR. BURKOW: Join in the waivers.

MR. COHEN: Denise Montez, have you discussed all these constitutional rights with your attorney Mr. Pransky?

DEFENDANT DENISE MONTEZ: Yes.

MR. COHEN: After discussing these rights with Mr. Pransky, do you believe you understand them?

DEFENDANT DENISE MONTEZ: Yes.

MR. COHEN: Understanding these rights and knowing that you must give them up in order to enter this guilty plea, do you give up these rights?

DEFENDANT DENISE MONTEZ: Yes.

1 MR. COHEN: Mr. Victor Montez, are you pleading guilty  
2 or entering this plea freely and voluntarily?

3 DEFENDANT VICTOR MONTEZ: Yes, sir, I am.

4 MR. COHEN: Denise Montez, are you entering this plea  
5 freely and voluntarily?

6 DEFENDANT DENISE MONTEZ: Yes.

7 MR. COHEN: Has anyone used any force or threats of  
8 force for anything similar to that against either of you in  
9 order to get you to enter these pleas, Victor Montez?

10 DEFENDANT VICTOR MONTEZ: No.

11 MR. COHEN: Denise Montez?

12 DEFENDANT DENISE MONTEZ: No.

13 MR. COHEN: Victor Montez, is it a correct statement  
14 that in the county of Los Angeles you did unlawfully kill  
15 another human being with malice aforethought? Is that what  
16 you did?

17 DEFENDANT VICTOR MONTEZ: Pardon me?

18 MR. COHEN: Is that what you did?

19 DEFENDANT VICTOR MONTEZ: Yes, I did.

20 MR. COHEN: In the commission of this particular  
21 offense, did you personally use a handgun?

22 DEFENDANT VICTOR MONTEZ: Yes, I did.

23 MR. COHEN: Counsel, stipulate to a factual basis for  
24 the plea?

25 MR. BUREKOW: Stipulate.

26 MR. COHEN: Denise Montez, is it a correct statement  
27 that you knew after this murder had been committed that you  
28 harbored concealed and aided your co-defendant with the intent



1 that your co-defendant avoided or escaped arrest, trial,  
2 conviction or punishment for this offense?

3 Is that what you did?

4 DEFENDANT DENISE MONTEZ: Yes.

5 MR. COHEN: Counsel, stipulate to a factual basis for  
6 the plea?

7 MR. PRANSKY: So stipulated.

8 THE COURT: Excuse me. Victor Montez, Mr. Montez, do  
9 you understand that at the end of doing your actual time in  
10 custody in the State Prison that you would be subject to parole?

11 Do you understand that?

12 DEFENDANT VICTOR MONTEZ: Yes.

13 THE COURT: Mrs. Montez, likewise if you should end up  
14 in State Prison on this matter when you finish doing your  
15 actual time in custody you also will be subject to parole.

16 Do you understand that?

17 DEFENDANT DENISE MONTEZ: Yes.

18 MR. COHEN: Victor Mandel Montez, in this case  
19 A 146 105 to a violation of Section 187 of the Penal Code, that  
20 being the felony of murder in the second degree, how do you  
21 plead, guilty or not guilty?

22 DEFENDANT VICTOR MONTEZ: Guilty.

23 MR. COHEN: As to the allegation that in the commission  
24 of this murder you personally used a firearm, do you admit or  
25 deny that?

26 DEFENDANT VICTOR MONTEZ: I admit.

27 MR. COHEN: Counsel, concur in the plea?

28 MR. BURKOW: Concur.



1 MR. COHEN: Denise Marie Montez, to the violation of  
2 Section 32 of the Penal Code, that being the felony of  
3 accessory after the fact, how do you plead, guilty or not  
4 guilty?

5 DEFENDANT DENISE MONTEZ: Guilty.

6 MR. COHEN: Mr. Pransky, concur in the plea?

7 MR. PRANSKY: Counsel concurs in the plea.

8 THE COURT: All right. The court finds as to each  
9 defendant they have knowingly, understandingly and intelligently  
10 given up their constitutional rights. The plea is made freely  
11 and voluntarily with an understanding of the nature and the  
12 consequences thereof.

13 The court finds there is a factual basis for the  
14 plea. The court accepts the plea.

15 MR. PRANSKY: April 21st, Your Honor?

16 THE COURT: 21, no. After the 23rd.

17 MR. PRANSKY: April 23rd?

18 THE COURT: 23rd. Probation and sentence hearing  
19 April the 23rd, 9:00 o'clock. Both of you are ordered back at  
20 that time.

21 MR. PRANSKY: Your Honor, I want to be heard as to bail  
22 in this matter.

23 THE COURT: Go ahead.

24 MR. PRANSKY: Your Honor, bail in this matter has been  
25 in excess of \$50,000.00. In addition thereto, there has been a  
26 \$20,000.00 bail imposed upon my client on a misdemeanor matter  
27 in Ventura County.

28 She has now entered a plea of guilty to an

1 offense which carries a maximum of three years. She has been  
2 in custody for 19 months.

3 This matter has gone to the Court of Appeals  
4 and it has gone up to the Supreme Court.

5 Immediately following the Supreme Court's  
6 ruling, I started to negotiate this case with Mr. Weisberg,  
7 and he came to an agreement that as to my client the worst that  
8 they could ever prove would be an accessory after the fact.

9 This was an unfortunate situation. But I  
10 honestly believe that Mr. Montez never intended to kill the  
11 victim; that this was strictly an accident.

12 My client's wife or -- I should say, excuse  
13 me -- the wife of Mr. Montez was present at the time; that she  
14 was quite frightened. She was upset as well as Mr. Montez  
15 being quite upset.

16 They did not know what to do under the  
17 circumstances.

18 I think that it is only natural that a wife  
19 would come to the assistance of her husband.

20 The extent of her being accessory after the  
21 fact is driving the vehicle back to Oxnard where they had  
22 originally -- where their original destination.

23 The victim had agreed to take them to Oxnard,  
24 but unfortunately by accident he was killed.

25 The other part of this accessory after the  
26 fact is that my client and her husband temporarily resided in  
27 a motel for probably less than 24 hours.

28 I would urge the court, since she has done 19



months, the maximum that she would have to do would be three years.

Although she has a prior record, she has never been to State Prison and I don't believe she has any felony convictions.

What would probably be done in this particular case at the worst would be to impose the mid-term, because I cannot foresee any elements in aggravation.

Considering what her involvement was as a wife who was there to assist her husband under the worst of circumstances, if she got two years in the State Penitentiary she will have already served that time, since one does 16 months on two years.

If the court saw fit to place her on probation, she really would only have approximately five months more to do if she was ever incarcerated in the future.

I think Ventura County on a 647B violation of probation has been totally unreasonable in setting a bail of over \$20,000.00.

By the court releasing her on her own recognizance, it would require the Ventura County to come and pick up Miss Montez, and she could clear up that matter prior to probation and sentencing.

I urge the court on behalf of Mrs. Montez to release her on her own recognizance. She has been in the county jail under the worst of circumstances because she has been charged with a 187. She was in a special barracks.

It was only recently that she was allowed to

work in the kitchen. Now she stands convicted of at least  
serious of all felonies.

THE COURT: What is the People's position?

MR. COHEN: I have no idea what the People's position  
is, Your Honor.

MR. PRANSKY: I would ask this: --

MR. COHEN: I was trying to get hold of Mr. Weisberg  
to see what his position was. His line has been busy for the  
last ten minutes while Mr. Pransky has been --

MR. PRANSKY: Additionally, I would add this, Your  
Honor: That Mrs. Montez while she was incarcerated did give  
birth. There is a child.

Her time should be reduced as quickly as  
possible and she would like to get there as quickly as possible.

Under the totality of the circumstances, I  
don't think the court would certainly be misplacing any  
confidence or abusing its discretion by leaving her out OR.

THE COURT: Okay. Mr. Burkow, do you wish to be  
heard on this matter?

MR. BURKOW: Yes, I do have an additional request.

THE COURT: Go ahead.

MR. BURKOW: I understand there is no opposition if  
somehow there is a way they could visit today under --

THE COURT: They can visit today. It is agreeable  
with me if it is agreeable with the sheriff.

MR. BURKOW: Could Your Honor request that through the  
sheriff somehow that they be permitted to visit today? If  
possible, prior to their being taken back --



1 THE BALLER: For a couple moments if th want to sit  
2 here, yes.

3 MR. BURKOW: We were --

4 MR. FRANSKY: We were somewhat promised by Mr. Mayer  
5 that they would have some time together.

6 THE COURT: Let's try to arrange that. Have you  
7 heard from Mr. Weisberg?

8 MR. COHEN: No, I haven't, Your Honor. I am working  
9 on it.

10 THE COURT: Let me hold that matter then. I want to  
11 hear from the District Attorney.

12 MR. BURKOW: May I then be excused?

13 THE COURT: Yes, you are finished.

14 MR. BURKOW: Thank you, Your Honor.

15 MR. COHEN: Your Honor, on that matter I have just  
16 spoken to Mr. Weisberg. His feeling is that the People oppose  
17 an OR release.

18 THE COURT: Did he have any reason?

19 MR. COHEN: Apparently it is a State Prison case.

20 THE COURT: All right.

21 (Recess taken in this matter.)

22 11:25 A.M.

23 THE COURT: 204, Montez: All right. In this  
24 matter Denise Montez on the OR motion --

25 MR. COHEN: Your Honor, in that particular matter  
26 apparently it is Mr. Weisberg's position that she should not  
27 be released on her own recognizance.  
28

1                    Apparently, there is just a very short time  
2                    until her sentence date. Mr. Weisberg's feeling is that there  
3                    is a good possibility if she is released on her own  
4                    recognizance she wouldn't report to the probation officer.

5                    Further, that in the past she has had a failure  
6                    to appear in Ventura County, and also based on the nature of  
7                    the offense that she should not be released at this time.

8                    MR. PRANSKY: In answer to that, Your Honor, as stated  
9                    by Mr. Burkow, there are so many equities in this particular  
10                    case that I overlooked probably the most important one is the  
11                    fact that she did while in custody give birth to a child who  
12                    is in the care of her mother.

13                    Mrs. Montax has worked in the Oxnard area  
14                    almost all of her life. She has been informed that her mother  
15                    is ill, that the child is ill.

16                    She failed to appear on that Ventura matter and  
17                    I think that is on the basis of failing to pay a fine.

18                    I am sure that she has a very keen interest in  
19                    what happens to her husband as well as what happens to her.

20                    There is just five months more that if she  
21                    would have to serve, if the court gave her the maximum.

22                    I don't believe that there is any risk that  
23                    she would not come back to this court. If she has all those  
24                    matters cleared up in Ventura, and I anticipate that that would  
25                    summarily take care of the matter in Ventura.

26                    THE COURT: All right. In this matter, the bail is  
27                    reduced to \$2,500.00. Motion to reduce to OR is denied.

28                    MR. PRANSKY: Thank you.

                  (Proceedings adjourned.)



1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT NW R HON. DAVID A. EGOROVICH, JUDGE

4 THE PEOPLE OF THE STATE OF CALIFORNIA,  
5  
6 plaintiff,

NO. A 146 105

7 vs.  
8 VICTOR MANDEL MONTES,  
9 DENISE MARIE MONTES,

REPORTER'S  
CERTIFICATE

10 Defendants.

11 STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 I, BONNIE FRANKFURT, Official Reporter of the Superior  
14 Court of the State of California, for the County of Los Angeles  
15 do hereby certify that the foregoing is a true and correct  
16 transcript of all of the admonitions given and waivers and  
17 admissions taken at the time of the taking of the plea in the  
18 above-entitled cause.

19 Dated this 13th day of April, 1982.

20  
21  
22  
23  
24  
25  
26  
27  
28  
LOS ANGELES COUNTY  
RECORDS OFFICE  
APR 12 1982  
DECEMBER

Bonnie Frankfurt CSR #2332  
Official Reporter

**EXHIBIT "3"**



ORIGINAL FILED

JUL 13 1982

COUNTY CLERK

048215  
FOR

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
DEPARTMENT NW R HON. DAVID A. HOROWITZ, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,

vs.

VICTOR MANUEL MONTEZ,

Defendant.

NO. A 146105

STATE PRISON

VAR HUY, CALIFORNIA; FRIDAY, MAY 21, 1982; 10:20 A.M.

Upon the above date, the defendant being present in court and represented by counsel, CARL BURROW, Esq., the People being represented by RALPH MAYER, Deputy District Attorney of the County of Los Angeles, the following proceedings were held:

(Alexandria Walsh, Official Reporter, CSR #4418.)

THE COURT: Number 302, Victor Montes.

As of April 23, he had 619 days actually served.  
What is the total now?

1 MR. BERNOW: As of -- I did not compute it from the  
2 23rd of April on, but I think that today would make it another  
3 29 days, which would make it 648 days.

4 THE COURT: Okay.

5 The court has read and considered the probation  
6 report.

7 Waive arraignment for judgment?

8 MR. BERNOW: Yes, Your Honor. There is no legal cause.

9 THE COURT: Do you wish to be heard?

10 MR. BERNOW: I would just briefly ask the court to  
11 understand one thing. I think the sentence is locked in as  
12 far as the sentencing is concerned. I think that's pretty  
13 much preordained. But I think on behalf of Mr. Montez I'd  
14 be less than open with the court if I didn't indicate that this  
15 individual is not the same individual who was arrested on the  
16 night in question. He has undergone many, many changes.

17 He would hope that the court -- society would  
18 somehow understand that. But at no time was it his intention  
19 to have the incident culminate in the way that it did. It's  
20 bad enough that he admitted that there was a crime involved,  
21 but it certainly in his mind had never but for an accident and  
22 his rash judgment in having a weapon would have never ended  
23 in the way that it did. He would hope that somehow the court  
24 would understand that and the prison authorities would  
25 understand that.

26 With that it's submitted, Your Honor.

27 THE COURT: I agree with you. It's unfortunate to see  
28 a person who was honorably discharged, a paratrooper in the

1 Special Forces ending up with seventeen to life in the State  
2 Prison. It's very unfortunate, Mr. Montes. I hope you are  
3 successful in the future.

4 Very well. In this matter probation is denied.  
5 You're sentenced to the State Prison for a period of seventeen  
6 years to life. It's fifteen to life plus the enhancement,  
7 12022.5, which is an additional two years. Seventeen to life  
8 is the total.

9 Given credit for 468 days actually served plus  
10 234 days good time and work time.

11 Motion on remaining counts?

12 MR. MAYER: To dismiss, Your Honor.

13 THE COURT: Granted.

14 (Proceedings were concluded.)  
15  
16  
17  
18  
19  
20  
21  
22  
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26  
27  
28



1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT NW R HON. DAVID A. HOROWITZ, JUDGE

4 THE PEOPLE OF THE STATE OF CALIFORNIA,

5 Plaintiff,

6  
7 V.  
8 VICTOR MANDEL MONTEZ,

9 Defendant.

10 NO. A-146105

11 REPORTER'S  
12 CERTIFICATE

13 STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15 I, ALEXANDRIA WALSH, Official Reporter of the  
16 Superior Court of the State of California, for the County of  
17 Los Angeles, do hereby certify that the foregoing is a true  
18 and correct transcript of the proceedings held at the time of  
19 pronouncing sentence; that the views and recommendations of  
20 the court, if any, were contained therein, pursuant to Section  
21 1203.01 of the Penal Code.

22 Dated this 6th day of July, 1987.

23  
24  
25  
26 /s/ Alexandria Walsh  
27 Official Reporter

28 CSR #4418

**EXHIBIT "4"**



3

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

NW

DATE MAY 21 4982  
 DEPT. ARBUCKLE/HAGLE  
 HONORABLE DAVID HROWITZ  
 STADLER/NICODEN  
 JUDGE  
 Deputy Sheriff  
 DEPUTY DISTRICT ATTY  
 CASE NO. A146105  
 PEOPLE OF THE STATE OF CALIFORNIA  
 OL MONTEZ VICTOR SANDER  
 COURT FOR DEFENDANT  
 604  
 209  
 01CT5  
 BOX CHECKED IF ORDER APPLICABLE: X

NATURE OF PROCEEDINGS PLS 10-15-80

73 ☐ CRIMINAL PROCEEDINGS (JUDGED/RESUMED) IS SWORN AS THE ENGLISH INTERPRET

74 ☐ DEFENDANT ORDERED DELIVERED TO DEPARTMENT OF CORRECTIONS PER SECTION 1201.03 PENAL CODE

75 ☐ ON MOTION, PROBATION AND SENTENCE HEARING CONTINUED TO

76 ☐ AT A.M. IN DEPT. SUPPLEMENTAL PROBATION REPORT/PROGRESS REPORT ORDERED

77 ☐ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR SENTENCING

78 ☒ PROBATION DENIED: SENTENCE IS IMPOSED AS FOLLOWS:  
 VERSED IN STATE PRISON FOR ☐ TERM PRESCRIBED BY TOTAL OF 17 years to LIFE  
 COURT SELECTS THE TERM OF 15 years FOR THE BASE TERM AS TO COUNT 1  
 PLUS 2 years AS INDICATED IN BOX 61 BELOW  
 COMMITTED TO CALIFORNIA YOUTH AUTHORITY: THE TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WOULD  
 HAVE BEEN SENTENCED PURSUANT TO SECTION 1170 PENAL CODE IS 5 years  
 IMPRISONED IN LOS ANGELES COUNTY JAIL FOR TERM OF 6 months  
 FINED IN SUM OF \$ PLUS ASSESSMENT TO BE PAID TO COUNTY CLERK

79 ☐ SENTENCE IS SUSPENDED

80 ☐ PROCEEDINGS SUSPENDED

81 ☐ PROBATION GRANTED FOR A PERIOD OF 4 YEARS (SEE CONDITIONS LISTED BELOW)

82 ☐ PROBATION TO BE WITHOUT FORMAL SUPERVISION

83 ☐ SPEND FIRST IN COUNTY JAIL ROAD CAMP OR HONOR FARM RECOMMEND

84 ☐ WORK FULFROUGH PROGRAM RECOMMENDED NOT TO BE ELIGIBLE FOR COUNTY PAROLE

85 ☐ PAY FINE OF \$ PLUS SURCHARGE OF \$5.00 PURSUANT TO SECTION 206.5 PENAL CODE IF US ADDITIONAL

86 ☐ FINE OF \$500.00 PURSUANT TO SECTION 13725 HEALTH AND SAFETY CODE TOTAL FINE OF \$

87 ☐ ASSESSMENT TO BE PAID TO COUNTY CLERK/PROBATION OFFICER IN SUCH AMOUNT AND MANNER AS HE SHALL PRESCRIBE

88 ☐ MINIMUM PAYMENT OF FINE/RESTITUTION TO BE \$

89 ☐ MAKE RESTITUTION THROUGH PROBATION OFFICER IN SUCH AMOUNT AND MANNER AS HE SHALL PRESCRIBE

90 ☐ TOTAL AMOUNT OF RESTITUTION TO INCLUDE A 2% SERVICE CHARGE AS AUTHORIZED BY SECTION 279 WELFARE & INST. CODE

91 ☐ NOT DRINK ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF ITEM OF SALE

92 ☐ NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS, OR ASSOCIATED PARAPHERNALIA EXCEPT

93 ☐ WITH VALID PRESCRIPTION AND STAY AWAY FROM PLACES WHERE USERS CONGREGATE

94 ☐ NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG USERS OR SELLERS

95 ☐ SUBMIT TO PERIODIC ANTINARCOTIC TESTS AS DIRECTED BY THE PROBATION OFFICER

96 ☐ HAVE NO BLANK CHECKS IN POSSESSION; NOT WRITE ANY PORTION OF ANY CHECKS, NOT HAVE BANK ACCOUNT LPO

97 ☐ WHICH YOU MAY DRAW CHECKS

98 ☐ NOT GAMBLE OR ENGAGE IN BOOKMAKING ACTIVITIES OR HAVE PARAPHERNALIA THEREOF IN POSSESSION, AND NOT

99 ☐ BE PRESENT IN PLACES WHERE GAMBLING OR BOOKMAKING IS CONDUCTED

100 ☐ NOT ASSOCIATE WITH

101 ☐ COOPERATE WITH PROBATION OFFICER IN A PLAN FOR

102 ☐ SUPPORT DEPENDENTS AS DIRECTED BY PROBATION OFFICER

103 ☐ SEEK AND MAINTAIN TRAINING, SCHOOLING OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER

104 ☐ MAINTAIN RESIDENCE AS APPROVED BY PROBATION OFFICER

105 ☐ SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLES

106 ☐ NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND INSURED

107 ☐ NOT OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS

108 ☐ SUBMIT HIS PERSON AND PROPERTY TO SEARCH OR SEIZURE AT ANY TIME OF THE DAY OR NIGHT BY ANY LAW ENFOR

109 ☐ CEMENT OFFICER WITH OR WITHOUT A WARRANT

110 ☐ OBEY ALL LAWS, ORDERS AND REGULATIONS OF THE PROBATION DEPARTMENT AND OF THE COURT

111 ☒ DEFENDANT TO BE GIVEN CREDIT FOR 60 DAYS IN CUSTODY (SEE 24 DAYS GOOD TIME/WORK TIME)

112 ☐ SENTENCE COUNTS TO RUN CONSECUTIVELY/CONCURRENTLY WITH

113 ☐ STAY OF EXECUTION GRANTED TO

114 ☒ ON MOTION OF PEOPLE COUNTS DISMISSED IN FURTHERANCE OF JUSTICE

115 ☐ COURT ADVISES DEFENDANT OF HIS APPEAL/PAROLE RIGHTS

116 ☐ FURTHER ORDER AS FOLLOWS/ADDITIONAL CONDITIONS OF PROBATION

Additional 2 years for 120225 bond under  
 allegation in Court 1 to run consecutive to  
 sentence on Court 1

117 ☐ SHERIFF IS ORDERED TO ALLOW DEFENDANT PHONE CALLS AT DEFENDANT'S OWN EXPENSE

118 ☐ DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE BAIL FORFEITED BAIL REVOKED

119 ☐ BENCH WARRANT ORDERED ISSUED/AND HELD UNTIL BAIL POSTED BAIL FIXED AT \$

120 ☐ DEFENDANT APPEARING BENCH WARRANT ORDERED RECALLED/QUASHED

**EXHIBIT "5"**



I certify that this image is a true and correct copy of the original document on this date:  
 Date 11-18-82

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302

## SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

PROBATION OFFICERS REPORT

REPORT SEQUENCE # 1

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff

VICTOR MONTEZ,

Defendant

DEPT. NW-R	ATTY. BURKOW	JUDGE HOROWITZ
HEARING 4-23-82	C.I.I. NO. A0281745	COURT CASE NO. A-146105
OPS GRISHORE	AREA OF FICHT ESTV	PHOD. NO.
ADDRESS (IF IN CUSTODY, INSPECTOR ADDRESS WHEN RELEASED) (LAST) 131 NORTH BALSAM OXNARD, CA (NO TELEPHONE)		BY M. McLENNAN, DEPUTY

VICTOR MANUEL MARQUEZ-MONTEZ

CHARGES WITH THE CRIMES OF

CT. 1: 187 PC (MURDER) WITH USE ALLEGATION PURSUANT TO PENAL CODE 12022(A) AND  
 PENAL CODE SECTION 12022.5; CT. 11: 211 PC (ARMED ROBBERY) WITH USE ALLEGATION  
 PURSUANT TO PENAL CODE SECTION 12022(A) AND PENAL CODE SECTION 12022.5;

CONVICTED OF THE CRIMES OF

CT. 1: 187 PC WITH USE ALLEGATION PURSUANT TO SECTION 12022.5  
 CT. 11: 664/209 PC WITH ALLEGATIONS AND ALLEGATIONS OF CT. 1  
 CONTINUED TO P.S. HEARING. CT. 11: 211 PC DISMISSED AT \*\*

AT POLICE CT. (JURY)	DATE IN JAIL THIS CASE
PLEA	619

☐ Pre-conviction invest (131.3 C.C.P.)

☐ Drug Diversion invest (1000.1 (a) P.C.)

COMPANION CASES

DENISE MONTEZ

DISPOSITION  
P.S. HEARING 4-23-82

## PERSONAL HISTORY

AGE 28	BIRTHDATE 7-6-53	RACE MEX/AM	FORMAL EDUCATION 15 YEARS	AGE LEFT SCHOOL 16
MARRITAL STATUS MARRIED	HOME INCLUDES WIFE, THREE CHILDREN			NO. OF DEPENDENTS FOUR
OCCUPATION (LAST) ROOFER	INCOME PER MONTH 0	WHERE EMPLOYED NOT	KIND OF DISCHARGE HONORABLE	
HEALTH GOOD	CAME TO STATE 1956-1957	CAME TO COUNTY NOT	BRANCH MILITARY SERVICE U.S. ARMY	

SUPPLIED BY

CT. 111: 664/209 PC (ATTEMPTED KIDNAPPING WITH INTENT TO COMMIT  
 ROBBERY) PURSUANT TO PENAL CODE SECTION 12022(A) AND PENAL CODE  
 SECTION 12022.5.

\*\* APPELLATE COURT HEARING OF 11-25-80.

(AS SUPPLIED BY DEFENDANT AND CONFIRMED BY WIFE.)

DEFENDANT IS THE FOURTH OF NINE CHILDREN BORN TO  
 MANUEL ALVAREZ MONTEZ AND REYNOLDA MARQUEZ MONTEZ IN ELSA, TEXAS.  
 HE WAS RAISED BY HIS PARENTS IN OXNARD, CALIFORNIA. THE DEFENDANT  
 AND HIS FAMILY CAME TO CALIFORNIA WHEN HE WAS APPROXIMATELY THREE OR

1 FOUR YEARS OF AGE AND SETTLED IN SATICOY, CALIFORNIA. THEY  
2 SUBSEQUENTLY MOVED TO OXNARD, CALIFORNIA. THE DEFENDANT HAS NEVER  
3 LIVED IN LOS ANGELES COUNTY.

4 THE DEFENDANT, HIS WIFE, TWO CHILDREN AND A STEPSON,  
5 LAST RESIDED AT THE HOME OF THE DEFENDANT'S PARENTS IN OXNARD,  
6 CALIFORNIA FOR APPROXIMATELY TWO MONTHS. UPON RELEASE, THE DEFENDANT  
7 EXPECTS TO EITHER RETURN TO OXNARD OR LIVE IN SAN BERNADINO.

8 THE DEFENDANT'S PARENTS WERE DIVORCED IN 1973 OR 1974.  
9 THE FATHER IS A MECHANIC-WELDER AND HAS NOT REMARRIED. THE MOTHER'S  
10 OCCUPATION IS UNKNOWN. SHE REMARRIED IN 1980 TO A MR. COLON.

11 THE DEFENDANT ATTENDED CHANNEL ISLAND HIGH SCHOOL FOR  
12 APPROXIMATELY ONE YEAR AND DROPPED OUT AT THE AGE OF 16 YEARS WHEN HE  
13 ENROLLED IN THE JOB CORPS FOR APPROXIMATELY 11 MONTHS STUDYING HEAVY  
14 EQUIPMENT OPERATOR. HE LEFT THE JOB CORPS IN NOVEMBER OF 1969.  
15 WHILE IN THE NEW MEXICO STATE PENITENTIARY IN 1977 OR 1978, THE  
16 DEFENDANT OBTAINED HIS GENERAL EDUCATION DIPLOMA THROUGH THE DIVISION  
17 OF VOCATIONAL REHABILITATION. HE RECEIVED A CERTIFICATE FOR WELDING.  
18 HE APPEARS TO BE OF AVERAGE INTELLIGENCE.

19 THE DEFENDANT CO-HABITATED WITH LORENA R. MOLINA IN  
20 NEW MEXICO FROM APRIL OF 1975 UNTIL JUNE OF 1976 WHEN HE WAS COMMITTED  
21 TO THE NEW MEXICO STATE PENITENTIARY. HE RETURNED TO THE HOME OF  
22 MISS MOLINA IN APRIL OF 1978 AND REMAINED THERE UNTIL FEBRUARY OF 1979.  
23 THE DEFENDANT CO-HABITATED WITH DENISE GARCIA FROM MAY OF 1979 UNTIL

1 THEY MARRIED IN APRIL OF 1980. HE ASSUMED RESPONSIBILITY FOR HIS  
2 WIFE'S SON, WHO WAS THEN ONE YEAR OF AGE. THERE WERE TWO DAUGHTERS  
3 BORN OF THIS UNION; ONE ON FEBRUARY 9, 1980, AND THE SECOND IN  
4 JANUARY OF 1981.

5 THE DEFENDANT'S 27-YEAR-OLD BROTHER, ANASTACIO,  
6 HAD ONE LAW ENFORCEMENT CONTACT AS A JUVENILE FOR CURFEW AND MALICIOUS  
7 MISCHIEF.

8 THE DEFENDANT WAS LAST EMPLOYED AS A ROOFER FOR  
9 SOUTHERN CALIFORNIA ROOFING COMPANY IN DOWNEY FROM JUNE OF 1980 UNTIL  
10 MID-JULY OF 1980. HE INDICATES THE JOB WAS THEN FINISHED AND HIS  
11 SALARY WAS \$11.90 PER HOUR. THE DEFENDANT INDICATES THERE HAS BEEN  
12 NO OTHER EMPLOYMENT. HE PLANS TO RETURN TO ROOFING OR WELDING UPON  
13 HIS RELEASE.

14 THE DEFENDANT ENLISTED IN THE UNITED STATES ARMY ON  
15 SEPTEMBER 8, 1970, ACHIEVED A RATING OF E-2, AND WAS HONORABLY  
16 DISCHARGED ON SEPTEMBER 18, 1972. HE WAS A PARATROOPER IN THE  
17 SPECIAL FORCES.

18 FINANCIAL INFORMATION:

19 THE DEFENDANT LAST PAID RENT OF \$75 PER MONTH. HE  
20 OWNS A 1952 GMC, PICK UP VALUED AT \$700. HE INDICATES THE CITY  
21 TOWED THE TRUCK AWAY AND ITS WHEREABOUTS ARE NOW UNKNOWN. HIS  
22 FINANCIAL STATUS IS CURRENTLY POOR.  
23



SUBSTANCE ABUSE:

THE DEFENDANT FIRST BEGAN SMOKING MARIJUANA AT THE AGE OF 13 YEARS UTILIZING IT TWO TO THREE TIMES PER WEEK. AT THE AGE OF 13, HE BEGAN SHOOTING HEROIN ON WEEKENDS AT A COST OF FIVE DOLLARS PER CAPSULE. THIS HABIT SUBSEQUENTLY PROGRESSED UNTIL HIS DAILY USE AMOUNTED TO \$200 PER DAY. AT THE AGE OF 15, HE BEGAN TAKING VALIUMS "WHENEVER THERE WAS NO STUFF". THE DEFENDANT TOOK QUAALUDES ONE TIME ONLY AT THE AGE OF 19 YEARS. HE SUPPORTED HIS HABIT THROUGH ODD JOBS AND BURGLARIES. THE DEFENDANT HAS NEVER OVERDOSED.

FROM MAY OF 1979 THROUGH MAY OF 1980, THE DEFENDANT WAS IN THE VICTORY OUT REACH PROGRAM LOCATED ON STAR ROUTE 27, HELENDALE, CALIFORNIA. THE MAIN OFFICE IS LOCATED AT 747 MOUNT VERNON AVENUE IN SAN BERNADINO.

GANG ACTIVITY:

THE DEFENDANT DENIES ANY GANG AFFILIATIONS.

PRIOR RECORD:

DEFENDANT.

SOURCES OF INFORMATION:

DEPARTMENT OF JUSTICE (2-24-82), CII (4-16-82),

JUVENILE HISTORY:

AGE 9

OXNARD PD - MALICIOUS MISCHIEF, C&R MM

AGE 13

OXNARD PD - MARKS ON ARM.

-4-

(DEFENDANT SAYS MATTER DISMISSED AS HE STATED HE WAS GOING INTO THE JOB CORPS.)

ADULT HISTORY:

3-6-73

VENTURA SO - 459 PC (BURGLARY) - 4-26-73, DISMISSED FOR FURTHERANCE OF JUSTICE.

4-13-73

VENTURA SO - 11550 H&S (UNDER INFLUENCE CONTROLLED SUBSTANCE) - 11364 H&S (POSSESSION CONTROLLED SUBSTANCE PARAPHERNALIA) - 459 PC (BURGLARY) - 1-7-74, CONVICTED OF 11530 H&S (POSSESSION MARIJUANA) - CYA COMMITMENT.

4-17-73

VENTURA SO - 459 PC (BURGLARY) - DISMISSED. 4-26-73, PG, 602.5 PC (ENTERING NON-COMMERCIAL DWELLING) - ONE YEAR SUMMARY PROBATION.

10-19-73

VENTURA SO - 11360 H&S (SELL OR TRANSPORT MARIJUANA/HASH) FTA.

1-16-74

VENTURA SO - 242 PC (BATTERY) -

(DEFENDANT STATES THE INCIDENT HAPPENED WHILE IN COUNTY JAIL AND MATTER WAS DISMISSED.)

DATE UNKNOWN

NEW MEXICO - 459 PC (THEFT FROM MOTOR VEHICLE) - COMMITTED TO NEW MEXICO STATE PENITENTIARY, RELEASED 4-22-78.

(DEFENDANT STATES HE TURNED HIMSELF IN AS HE WAS AWARE OF A BENCH WARRANT HAVING BEEN ISSUED. HE SAYS HE WAS DISHONORABLY DISCHARGED FROM THE CALIFORNIA YOUTH AUTHORITY JURISDICTION ON JUNE 3, 1977 WHEN COMMITTED ON THIS CHARGE.)

PRESENT OFFENSE:

DEFENDANT WAS ARRESTED ON AUGUST 11, 1980 AT 12:00 NOON BY THE LOS ANGELES POLICE DEPARTMENT WITH THE ASSISTANCE OF THE OXNARD POLICE DEPARTMENT AT THE PLAZA MARINA HOTEL, LOCATED AT 711 WEST HUENEME, OXNARD AND BOOKED FOR 187 OF THE PENAL CODE (MURDER). AT THE TIME OF THE ARREST, THERE WAS AN OUTSTANDING OXNARD WARRANT

1 NUMBER 013334AM01 WITH BAIL SET AT \$75. THERE WAS NO BAIL SET ON  
2 THIS CURRENT ARREST. HE WAS CHARGED ON THE INFORMATION WITH COUNT  
3 ONE, 187 PENAL CODE (MURDER) DURING THE COMMISSION OF A ROBBERY AND  
4 KIDNAPPING PURSUANT TO PENAL CODE SECTION 190.2(A)(17); COUNT TWO,  
5 211 PENAL CODE (ROBBERY); COUNTS THREE, 664/209 PENAL CODE (ATTEMPTED  
6 KIDNAPPING TO COMMIT ROBBERY). ALL THREE COUNTS ALLEGED THE USE OF  
7 A FIREARM PURSUANT TO SECTION 12022.5 OF THE PENAL CODE AND PURSUANT  
8 TO SECTION 12022(A) OF THE PENAL CODE. IT WAS ALSO ALLEGED, IN ALL  
9 THREE COUNTS, DEFENDANT INFLICTED GREAT BODILY INJURY AS DEFINED IN  
10 SECTION 12022.7 OF THE PENAL CODE. COUNT TWO WAS DISMISSED ON  
11 OCTOBER 1, 1980 AND UPHOLD BY THE APPELLATE COURT ON NOVEMBER 25, 1980.  
12 ON MARCH 26, 1982, THE DEFENDANT PLED GUILTY TO COUNT ONE WITH THE  
13 USE ALLEGATION PURSUANT TO PENAL CODE SECTION 12022.5. REMAINING  
14 COUNTS AND ALLEGATIONS WERE CONTINUED TO THE PROBATION AND SENTENCING  
15 HEARING.

16 **FACTS**: BASED ON THE ARREST REPORT, A WITNESS, MARK LABASIT,  
17 INFORMED LOS ANGELES COUNTY SHERIFFS THAT HE HAD OBSERVED TWO MALE  
18 SUSPECTS ON AUGUST 10, 1980 AT 1:48 A.M. DRAGGING A BODY TO THE  
19 SHOULDER OF THE VENTURA FREEWAY WEST OF VALLEY CIRCLE OFF RAMP. AT  
20 4:00 A.M. ON THE SAME DATE, DEPUTIES OBSERVED THE VICTIM WITH A  
21 GUNSHOT WOUND TO HIS UPPER TORSO AND LYING IN A SUPINE POSITION ON  
22 THE FREEWAY SHOULDER. DEATH WAS INDICATED AS OCCURRING AT 2:18 A.M.  
23 THE VICTIM'S PANTS WERE OPEN AND PARTIALLY DOWN, THE ZIPPER WAS

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1 PARTIALLY BROKEN AND THE TOP BUTTON WAS PULLED OFF. A BULLET HOLE  
2 WAS OBSERVED BEHIND HIS RIGHT EAR AND A GUITAR PICK WAS STUCK TO  
3 HIS LEFT CHEEK WITH BLOOD. MRS. IRMA CEBALLOS (22), 237 LARK STREET,  
4 OXNARD, CALIFORNIA, INFORMED OFFICERS AT THE LOS ANGELES POLICE  
5 DEPARTMENT, WEST VALLEY STATION, ON AUGUST 11, 1980 THAT AT  
6 APPROXIMATELY 10:30 P.M. ON AUGUST 9, 1980, SHE AND TWO ASSOCIATES,  
7 VICTOR MONTEZ, AND DENISE MONTEZ, HAD BEEN VISITING SAN BERNADINO  
8 AND HAD STOPPED IN SAN FERNANDO VALLEY FOR A PIZZA ON THEIR RETURN  
9 TRIP. WHEN THE THREE ATTEMPTED TO START THEIR BROWN STATION WAGON  
10 AFTERWARDS, IT FAILED TO START AND THEY DECIDED TO HITCHHIKE ON THE  
11 VENTURA FREEWAY. THEY FIRST APPROACHED AN UNKNOWN MALE APPROXIMATELY  
12 ONE-HALF HOUR LATER. SUBSEQUENTLY, IT WAS AGREED THAT THE WITNESS  
13 AND MRS. MONTEZ WOULD APPEAR AS TWO FEMALES STRANDED ON THE FREEWAY  
14 WHILE MR. MONTEZ WOULD APPROACH ANY MOTORIST WHO STOPPED AND EXHIBIT  
15 A FIREARM HE CARRIED IN HIS WAISTBAND. THE DEFENDANT HID IN A BUSH  
16 AREA WHILE THE WOMEN HITCHHIKED. THE VICTIM APPROACHED IN A SILVER  
17 DATSUN, STATION WAGON, LICENSE NUMBER B28YHP, CONVERSED WITH  
18 MRS. MONTEZ, THEN ALLOWED THEM TO ENTER HIS VEHICLE. THE WITNESS  
19 ENTERED THE FRONT SEAT AND MRS. MONTEZ ENTERED THE REAR SEAT WHILE  
20 BECKONING TO THE DEFENDANT WHO WAS HIDING IN THE BUSHES. THE  
21 DEFENDANT RAN TO THE VEHICLE BRANDISHING A SMALL CALIBER FIREARM  
22 AND ENTERED THE REAR SEAT OF THE VEHICLE. HE THEN POINTED THE  
23 WEAPON AT THE REAR PORTION OF THE VICTIM'S HEAD AND TOLD HIM TO TAKE

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1 THEM TO OXNARD OR HE WOULD KILL HIM. THE DEFENDANT FIRED ONE ROUND,  
2 WITHOUT WARNING, STRIKING THE VICTIM APPROXIMATELY IN THE LOWER RIGHT  
3 OF HIS HEAD. THE VICTIM FELL FORWARD, THE DEFENDANT EXITED THE  
4 REAR PASSENGER DOOR AND OPENED UP THE FRONT PASSENGER DOOR. THE  
5 DEFENDANT THEN DROVE THE VICTIM'S BODY ACROSS THE FRONT SEATS FROM  
6 THE DRIVER'S SIDE AND SECRETED THE BODY BENEATH AN OVERHANGING TREE  
7 AND SHRUB AREA. THE WITNESS THEN OBSERVED THE DEFENDANT GOING THROUGH  
8 THE VICTIM'S GARMENTS BUT WAS UNSURE OF WHAT WAS REMOVED. THE  
9 WITNESS AND MRS. MONTEZ HAD ALSO EXITED THE VEHICLE. THE DEFENDANT  
10 THEN INSTRUCTED THE WITNESS TO RE-ENTER THE VEHICLE AND TOLD HIS  
11 WIFE TO WEAR GLOVES SO AS NOT TO LEAVE HER FINGERPRINTS ON THE VEHICLE.  
12 HE THEN ENTERED THE REAR SEAT AND INSTRUCTED HIS WIFE TO DRIVE THE  
13 VEHICLE TO 456 CHANNEL ISLAND BOULEVARD IN OXNARD. UPON ARRIVAL AT  
14 THE RESIDENCE WHICH IS OCCUPIED BY THERESA RAMIREZ, MRS. MONTEZ  
15 REMOVED CLOTHING WHICH HAD BELONGED TO THE VICTIM AND ATTEMPTED TO  
16 WASH THEM. THE WITNESS WAS UPSET AND THE DEFENDANT COMFORTED HER  
17 INDICATING THEY COULD NOT BE IDENTIFIED AND THERE WAS NO WAY TO  
18 TRACE THEIR LOCATION. WHEN THE WITNESS SUGGESTED THEY TURN THEMSELVES  
19 IN, THE DEFENDANT THREATENED HER WITH ACTS OF VIOLENCE AND STATED SHE  
20 WOULD BE KILLED IF SHE CONTACTED THE POLICE. THE WITNESS THEN  
21 STATED THE WEAPON HAD BEEN SOLD TO AN UNKNOWN FEMALE IN THE OXNARD  
22 AREA AND A GUITAR, WHICH HAD BEEN TAKEN FROM THE VICTIM'S VEHICLE,  
23 WAS ALSO SOLD TO SOMEONE IN THE OXNARD AREA. THE WITNESS THEN

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1 WILLINGLY ACCOMPANIED LOS ANGELES POLICE DEPARTMENT DETECTIVES TO THE  
2 OXNARD POLICE STATION AND IDENTIFIED A PHOTO OF THE DEFENDANT. AT  
3 APPROXIMATELY 12:10 P.M. ON AUGUST 11, 1980, THE WITNESS IDENTIFIED  
4 THE VICTIM'S VEHICLE AT 149 ELIZA COURT IN THE CITY OF OXNARD.  
5 THERESA RAMIREZ, LATER INFORMED OFFICERS THAT MR. AND MRS. MONTEZ  
6 HAD LEFT HER RESIDENCE AT APPROXIMATELY 4:00 P.M. ON AUGUST 10, 1980.  
7 MRS. RAMIREZ INFORMED OFFICERS THAT SHE HAD ORDERED THE DEFENDANT  
8 AND HIS WIFE OUT OF HER HOME AS THEY WERE ATTEMPTING TO SELL STOLEN  
9 GOODS AND STATED THEY COULD BE LOCATED AT THE PLAZA MARINA HOTEL.  
10 LOS ANGELES POLICE OFFICERS WENT TO THAT LOCATION ACCOMPANIED BY  
11 OXNARD POLICE OFFICERS AND WERE INFORMED THE DEFENDANT AND HIS WIFE  
12 WERE OCCUPYING APARTMENT NUMBER 25. THE DEFENDANT ANSWERED THE DOOR  
13 TO APARTMENT 25 AND A REVOLVER WAS OBSERVED ON THE NIGHTSTAND. BOTH  
14 THE DEFENDANT AND HIS WIFE WERE THEN ARRESTED. END

15 DEFENDANT'S STATEMENT:

16 THE DEFENDANT HAS NOT SUBMITTED A WRITTEN STATEMENT.  
17 ORALLY, HE STATES THAT HE, HIS WIFE, AND IRMA CEDALLOS WERE LOOKING  
18 FOR A RIDE IN THE SAN FERNANDO VALLEY WHERE HE HAD DRIVEN HIS CAR  
19 AND IT HAD BROKEN DOWN. THEY WERE EN ROUTE TO OXNARD FROM  
20 SAN BERNADINO. HE SAW A GUY PARKED AT A GAS STATION AND OFFERED  
21 HIM \$20 FOR A RIDE, BUT THE PERSON HAD NO GAS. THEY THEN WALKED ON  
22 TO THE 101 FREEWAY AND THE WOMEN WERE TOLD TO ATTEMPT TO GET A RIDE  
23 WHILE THE DEFENDANT HID. HE STATED HE WOULD CATCH THEM LATER. A

1 CAR STOPPED AND OFFERED THEM A RIDE. THE DEFENDANT THEN CHANGED HIS  
2 MIND, RAN TO THE CAR, AND PUSHED HIS WIFE OUT OF THE WAY KNOCKING  
3 HER DOWN. THE VICTIM WAS SCARED AND THE DEFENDANT TOLD HIM THAT  
4 "NOTHING WOULD HAPPEN TO HIM. JUST GIVE ME A RIDE." THE VICTIM  
5 AGREED AND THE DEFENDANT LET HIM GO. HE STATES HE HAD A GUN IN HIS  
6 HAND AND, WHEN THE VICTIM ADJUSTED HIMSELF IN HIS SEAT, HE ACCIDENTLY  
7 HIT THE GUN WHICH WENT OFF AND KILLED HIM. THE DEFENDANT TOOK THE  
8 VICTIM OUT OF THE CAR, PUT HIS BODY IN THE BUSHES, RE-ENTERED THE  
9 VEHICLE AND DROVE TO OXNARD. HE DENIES HAVING GONE THROUGH THE  
10 VICTIM'S POCKETS AS HE STATES HE HAD NO INTENTION OF ROBBING OR  
11 HURTING ANYONE.

12 INTERESTED PARTIES:

13 CYNTHIA STEWART, VICTIM'S SISTER, INDICATES THE  
14 VICTIM WAS SIX FEET TWO INCHES, APPROXIMATELY 170 POUNDS, AGE 33  
15 YEARS, SINGLE WITH NO DEPENDENTS. SHE STATES THAT IN 1976 HE HAD  
16 AN ATTACK IN HIS LEFT EYE OF HISTOPLASMOYSIS WHICH IS AN EYE DISEASE  
17 AND CAUSES BLINDNESS. SHE INDICATED THE ILLNESS CLOGS ONE'S VISION  
18 AND THAT THE DOCTOR HAD STATED THIS WAS THE WORST CASE EVER SEEN.  
19 SHE STATES HER BROTHER WAS RETURNING TO ALTADENA FROM BAND PRACTISE  
20 IN WOODLAND HILLS. THE CAR WAS SUBSEQUENTLY RETURNED, BUT WAS TOTALLY  
21 STRIPPED. MISS STEWARD RECEIVED A CALL FROM THE OXNARD POLICE  
22 DEPARTMENT INDICATING HER BROTHER'S CAR HAD BEEN FOUND; HOWEVER, SHE  
23 DID NOT KNOW AT THE TIME THAT THE HOMICIDE VICTIM WAS ACTUALLY HER



1 BROTHER. SHE STATES THERE WAS INSURANCE WHICH COVERED HER BROTHER'S  
2 FUNERAL EXPENSES. ALSO, MISS STEWART WAS INFORMED BY THE POLICE  
3 DEPARTMENT OF HER ELIGIBILITY FOR VICTIM'S COMPENSATION.

4 EVALUATION:

5 THE DEFENDANT, WHO INDICATES HIS ONLY EMPLOYMENT WAS  
6 FOR A PERIOD OF ONE AND ONE-HALF MONTHS SINCE HIS RELEASE FROM THE  
7 NEW MEXICO STATE PENITENTIARY IN 1978, HAS HAD THE ADVANTAGE OF  
8 BEING THE PRODUCT OF AN INTACT FAMILY ENVIRONMENT UNTIL THE AGE OF  
9 20 OR 21 YEARS. HOWEVER, HE WAS COMMITTED TO THE CALIFORNIA YOUTH  
10 AUTHORITY SOON AFTER HIS 21ST BIRTHDAY FOR POSSESSION. HIS ONLY  
11 OTHER CONTACT WITH LAW ENFORCEMENT HAS BEEN OF A MODERATE NATURE,  
12 HE COMES FROM A LARGE FAMILY AND NO OTHER MEMBERS ARE INDICATED AS  
13 HAVING BEEN ARRESTED. THE DEFENDANT HAS OBTAINED THE EQUIVALENT OF  
14 A HIGH SCHOOL DIPLOMA AND HAS HAD TRAINING AS A HEAVY EQUIPMENT  
15 OPERATOR AND TRAINING IN WELDING, YET NO ATTEMPTS WERE MADE TO  
16 OBTAIN CONTINUAL EMPLOYMENT. THE DEFENDANT HAS BEEN HEAVILY INVOLVED  
17 IN THE USE OF NARCOTICS AND HAS BEEN ADDICTED TO SAME FOR THE  
18 MAJORITY OF HIS LIFETIME. HE INDICATES REMORSE OVER THIS CURRENT  
19 MATTER AND DENIES ANY INTENT OF HARM TO ANYONE. THE VICTIM WAS A  
20 YOUNG MAN WITH NO DEPENDENTS; HOWEVER, IT APPEARS HE MAY HAVE HAD A  
21 VISION PROBLEM AND POSSIBLY NOT OBSERVED THE DEFENDANT APPROACHING  
22 HIS VEHICLE.

THIS WAS A CRIME OF A VIOLENT NATURE AND THE DEFENDANT'S

1 STATEMENT OF FEELING REMORSE IS IN DIRECT CONTRADICTION TO STATEMENTS  
2 OBTAINED FROM THE ONLY EYEWITNESSES TO THE INCIDENT.

3 SENTENCING CONSIDERATIONS:

4 DUE TO THE CHARGE OF MURDER WITHIN THE USE ALLEGATION  
5 HAVING BEEN FOUND TRUE, THE DEFENDANT IS INELIGIBLE FOR PROBATION.  
6 PURSUANT TO SECTION 1203.06 OF THE PENAL CODE AND 1203.075 OF THE  
7 PENAL CODE.

8 CIRCUMSTANCES IN AGGRAVATION:

- 9 1. PRE-PLANNED USE OF A FIREARM.  
10 2. A VIOLENT CRIME WHICH CAUSED THE DEATH TO THE  
11 VICTIM.  
12 3. DEFENDANT THREATENED THE VICTIM WITH A FIREARM.  
13 4. DEFENDANT ATTEMPTED TO CONCEAL THE VICTIM FROM  
14 SIGHT.  
15 5. THE DEFENDANT TAMPERED WITH EVIDENCE USEFUL IN  
16 THE INVESTIGATION OF THIS CRIME.

17 CIRCUMSTANCES IN MITIGATION:

- 18 1. DEFENDANT'S VEHICLE WAS INOPERATIVE.  
19 2. THE DEFENDANT IS A HEROIN ADDICT.

20 CIRCUMSTANCES IN MITIGATION AND IN AGGRAVATION SUPPORT  
21 A MOTION FOR THE HIGHER BASED TERM.

22 RECOMMENDATION:

23 IT IS RECOMMENDED THAT PROBATION BE DENIED AND THAT



1 DEFENDANT BE SENTENCED TO STATE PRISON WITH PRE-IMPRISONMENT OF  
2 619 DAYS.

3 RESPECTFULLY SUBMITTED,

4 KENNETH E. KIRKPATRICK  
5 PROBATION OFFICER

6 BY

*Lynette Grismore*  
7 LYNETTE GRISHORE, DEPUTY  
8 EAST SAN FERNANDO VALLEY AREA OFFICE  
9 901-3979

10 READ AND APPROVED:

11 *Art Keener*  
12 ART KEENER, SDPO

13 (SUBMITTED 4-16-82)  
14 (TYPED 4-20-82)  
15 LG:BS (6)

16 -13-

I HAVE READ AND CONSIDERED  
THE FOREGOING REPORT OF THE  
PROBATION OFFICER.

*David H. Brown*  
JUDGE OF THE SUPERIOR COURT  
17-14

**EXHIBIT 1**  
**Part 3 of 3**

**EXHIBIT "6"**

SUBSEQUENT PAROLE CONSIDERATION HEARING  
STATE OF CALIFORNIA  
BOARD OF PAROLE HEARINGS

In the matter of the Life )  
Term Parole Consideration )  
Hearing of: )

CDC Number C-48215

VICTOR MONTEZ )  
\_\_\_\_\_)  
\_\_\_\_\_)

**INMATE  
COPY**

CORRECTIONAL TRAINING FACILITY  
SOLEDAD, CALIFORNIA

MAY 31, 2006

10:57 A.M.

PANEL PRESENT:

JACK GARNER, Presiding Commissioner  
DENNIS SMITH, Deputy Commissioner

OTHERS PRESENT:

VICTOR MONTEZ, Inmate  
KATERA E. RUTLEDGE, Attorney for Inmate  
HERBERT LAPIN, Deputy District Attorney  
TWO CORRECTIONAL OFFICERS, Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Ramona Cota

Peters Shorthand Reporting

CALIFORNIA BOARD OF PAROLE HEARINGS

D E C I S I O N

DEPUTY COMMISSIONER SMITH: We are back on the record. Everyone previously identified is back in the hearing room.

PRESIDING COMMISSIONER GARNER: Very good, thank you. It's 12:20 p.m. in the matter of Victor Montez, C Charles 48215. Mr. Montez, the panel has reviewed all the information received from the public and relied on the following circumstances in concluding you are not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if you were released from prison. I want to tell you right out of the chute we're going to deny you for a year and we'll talk a little bit more about that as we proceed through the hearing. We started with the commitment offense. Although we considered many factors we started with the commitment offense and we felt that the offense was carried out in an especially cruel manner. The victim, Michael Stewart, 33 years of age, was shot in the head after he stopped to render aid to what he thought were two individuals that were in distress along the side of the freeway. The

VICTOR MONTEZ C-48215 DECISION PAGE 1 05/31/06



1 offense was carried out in a very dispassionate  
2 and calculated manner in that the first vehicle  
3 to stop was going to be the target. It was  
4 pretty clearly drawn that you put the two women  
5 out on the freeway as a lure and that you were  
6 hiding in the bushes and unfortunately it was  
7 Mr. Stewart that was the first Samaritan that  
8 decided to stop and help. The victim was ~~in good~~  
9 defiled after the offense in that he was  
10 stripped, his body was concealed along the  
11 shoulder of the Ventura Freeway and just  
12 basically left in the shrubbery. The motive for  
13 the crime, when you consider the magnitude of  
14 the offense, it was very trivial. You had the  
15 car. The worst case scenario you could have  
16 just ordered him out to the side of the freeway  
17 but that's neither here nor there at this point  
18 in time. The conclusions were drawn from the  
19 statement of facts that were taken from the June  
20 2002 calendar in that:

21 "On August 9, 1980 Montez and two  
22 women, one of whom was his wife,  
23 were on their way home, on their  
24 way to Oxnard when their car  
25 became disabled. The two women  
26 began to hitchhike on the Ventura

1 Freeway while Montez hid in the  
2 bushes. It was agreed that the  
3 two women would appear as two  
4 females stranded on the freeway  
5 while Montez would approach the  
6 motorist who stopped and exhibit a  
7 firearm he carried in his  
8 waistband. The victim, Michael  
9 Stewart stopped for the women.  
10 The women entered the car and Ms.  
11 Montez entered the rear seat while  
12 beckoning to Montez who was still  
13 hiding in the bushes. He ran to  
14 the car brandishing a small  
15 caliber firearm and entered the  
16 rear seat of the car. He pointed  
17 the firearm at the back of the  
18 victim's head and told him to  
19 drive them to Oxnard or he would  
20 kill him. Montez then fired,  
21 striking and killing the victim.  
22 Montez exited the car, dragged the  
23 body from the car and secreted the  
24 body beneath an overhanging tree  
25 and shrubs. After leaving the  
26 body Montez, his wife and the  
27 VICTOR MONTEZ C-48215 DECISION PAGE 3 05/31/06

1 other female companion drove the  
2 victim's car to Oxnard. Montez  
3 was arrested on August 11, 1980."

4 So far as your previous record the panel noted  
5 at the time that you did have an escalating  
6 pattern of criminal conduct and that you had  
7 failed previous grants of probation. And that  
8 you had failed from society's previous attempts  
9 to correct your criminality through the CYA  
10 commitment. So far as the social history the  
11 panel noted -- the criminality, excuse me. The  
12 controlled substances and entering a non-  
13 commercial dwelling which was an offense, a  
14 602.5 offense, which was associated with a  
15 burglary, which was dismissed in the interest of  
16 justice. Excuse me. As far as your  
17 institutional behavior you have programmed very  
18 well. So far as the misconduct goes it is old  
19 and dated. The last 128, you've had a total of  
20 four, was May 26, 1989 and the last 115 was  
21 September 16, 1995 for non-performance of work.  
22 So far as the psychological report prepared by  
23 Dr. Macomber in May 2006, it's favorable. So  
24 far as your parole plans the one thing that we  
25 wanted to note is we did take into consideration  
26 the letter that you had from essentially the  
27 VICTOR MONTEZ C-48215 DECISION PAGE 4 05/31/06

1 halfway house is for an interview only. And we  
2 realize that very few of the halfway houses will  
3 give you a firm commitment but one of that  
4 things that really amplifies is the need to have  
5 a firm backup parole plan that's very  
6 comprehensive with a member of the family. Or  
7 two; you can certainly have more than one. Also  
8 if you are concerned about paroling back to the  
9 county of the commitment offense, if the panel  
10 thinks that you have a better shake and a better  
11 chance going to another location to another  
12 county we have the authority to parole you into  
13 that county. So in this situation it looks like  
14 the lion's share of your family is in the  
15 Ventura County area. So if your letters come  
16 forward from Ventura County with respect to  
17 offers of housing, those would coincide with the  
18 job offer that you have from Mr. Flores because  
19 I believe that the job offer and his business is  
20 in Ventura County. So get started as soon as  
21 you can. I will share with you that the panel  
22 does have some concerns about the offer of  
23 housing from Martha Duran. We think you would  
24 be better served with family members. That's  
25 not to say it would be excluded. We're just  
26 thinking that the family members are more of a  
27 VICTOR MONTEZ C-48215 DECISION PAGE 5 05/31/06

1 positive and might serve your interest in a more  
2 positive way. You were here; you heard the  
3 response from the representative from the Los  
4 Angeles County District Attorney's Office  
5 indicating opposition to parole. So what we're  
6 going to do at this point is we're going to  
7 encourage you to continue your AA/NA, whichever  
8 is available, and continue to earn the positive  
9 chronos. And with that I'll ask Commissioner  
10 Smith if he has got additional comments.

11 DEPUTY COMMISSIONER SMITH: Sir, quite  
12 frankly with regard to the residential plan with  
13 Ms. Duran. The parole division probably would  
14 not approve that since you no longer have a  
15 relationship. She's an ex-wife and that you  
16 don't have a history of residing. It might be  
17 fine with the next Board but from my experience  
18 with the parole division they probably would not  
19 approve that.

20 INMATE MONTEZ: I understand.

21 DEPUTY COMMISSIONER SMITH: You know, I  
22 am certainly not being critical of your efforts,  
23 your efforts are all positive. But I am just  
24 suggesting that in this next year spend time to  
25 really, really firm up the plans. You have got  
26 a lot of options. You know, I'd focus on the



1 strongest ones.

2 INMATE MONTEZ: Okay.

3 DEPUTY COMMISSIONER SMITH: You are  
4 certainly moving in the right direction. You  
5 may be disappointed and if you are I certainly  
6 understand that. But you are headed in the  
7 right direction, in my opinion. I believe that  
8 all things being equal with some improvements  
9 that at your next hearing you will be a much  
10 stronger candidate. A strong candidate today  
11 but a much stronger candidate the next time. So  
12 don't lose focus on what your objective is --

13 INMATE MONTEZ: No.

14 DEPUTY COMMISSIONER SMITH: -- which is  
15 to get out of here. Okay?

16 INMATE MONTEZ: Yes.

17 DEPUTY COMMISSIONER SMITH: I wish you  
18 well sir. Good luck to you.

19 INMATE MONTEZ: Thank-you.

20 PRESIDING COMMISSIONER GARNER: I'll go  
21 ahead and echo the comments. I am certainly  
22 glad I asked about letters from your family now  
23 because they really are -- they are more of an  
24 asset than you will ever know. We have a lot of  
25 inmates that come before us that basically have  
26 no one on the outside, absolutely no one on the

1 outside. They have either outlived them all or  
2 the family has just basically written them off.  
3 So you have got an asset there. It's going to  
4 be your strength. It's going to be your social  
5 and support network. Your employer is not going  
6 to provide that, you're family is going to  
7 provide your support network. The other thing,  
8 that whatever family member you think offers you  
9 the best plan for yourself, it would be helpful  
10 also to have that family member identify AA/NA  
11 resources that are immediately in the  
12 neighborhood near them or the closest possible  
13 to them. And whether they're along public  
14 transportation routes or they are going to offer  
15 to drive you there. Those are all things that  
16 shore you up as a better candidate. I echo his  
17 sentiment. I hope that you are not too  
18 disappointed. Keep your focus because right now  
19 the only thing that in my mind you have to work  
20 on is shoring up the parole plans. I'll tell  
21 you, don't slip on any banana peels calling a 15  
22 or a 128 because that's not going to help you.  
23 You've got some distance between those and you  
24 don't have to worry about them right now. They  
25 are not an issue at least with this panel and I  
26 can't see them being an issue with the next

61

1 panel you come before. With that I'll go ahead  
2 and note that it is now 12:28 p.m. and I am  
3 going to wish you the best of luck. Get to  
4 work.

5 INMATE MONTEZ: Okay. Well I just want  
6 to say that I read First Peter's 2:14 and I  
7 submitted to that so I am not disappointed.  
8 (Indiscernible).

9 ATTORNEY RUTLEDGE: Thanks a lot.

10 DEPUTY COMMISSIONER SMITH: Thank you  
11 both.

12 ATTORNEY RUTLEDGE: Good luck to you.

13 INMATE MONTEZ: Thank you.

14 --oOo--

15

16

17

18

19

20

21

22

23 PAROLE DENIED ONE YEAR

SEP 28 2006

24 THIS DECISION WILL BE FINAL ON: \_\_\_\_\_

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT  
26 DATE, THE DECISION IS MODIFIED.

27 VICTOR MONTEZ C-48215 DECISION PAGE 9 05/31/06

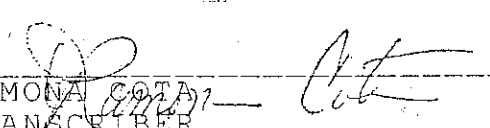
62.

CERTIFICATE AND  
DECLARATION OF TRANSCRIBER

I, RAMONA COTA, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 61, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of VICTOR MONTEZ, CDC NO. C-48215, on MAY 31, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated August 13, 2006, at Sacramento County, California.

  
\_\_\_\_\_  
RAMONA COTA  
TRANSCRIBER  
PETERS SHORTHAND REPORTING

**EXHIBIT "7"**



LIFE PRISONER EVALUATION REPORT  
SUBSEQUENT PAROLE CONSIDERATION HEARING  
JUNE 2004 CALENDAR

MONTEZ, VICTOR MANDEL

C48215

1. COMMITMENT FACTORS:

- A. Life Crime: All relevant documents from the previous hearing including the transcripts, have been considered and that information appears valid, and the writer has no further information to add.
1. Summary of Crime: Remains the same as stated in the previous hearings.
  2. Prisoner's Version: Remains the same as stated in the previous hearings.
  3. Aggravating/Mitigating Circumstances:
    - a. Aggravating Factors: Remains the same as stated in the previous hearings.
    - b. Mitigating Factors: Remains the same as stated in the previous hearings.
- B. Multiple Crime(s): None.
1. Summary of Crime: N/A.
  2. Prisoner's Version: N/A.

PRECONVICTION FACTORS:

- A. Juvenile Record: Documents from the previous hearings have been considered and that information remains valid.
- B. Adult Convictions: Documents from the previous hearing have been considered and that information remains valid.

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- C. Personal Factors: Documents from the previous hearings have been considered and that information remains valid.

### III. POSTCONVICTION FACTORS:

- A. Special Programming/Accommodations: None.
- B. Custody History: Documents from the previous hearings have been considered and the information remains valid. During the period of time since the last hearing, the prisoner has remained at the Correctional Training Facility and housed in the general population in a dorm setting. He has maintained a stable work record and presently assigned to the PIA Wood Furniture Assembly Factory. In review of the prisoner's work performance covering a period from 4/1/02 to 7/01/02, he demonstrated satisfactory work grades. However, noting a period from 7/1/02 to 11/01/02 per CDC 101 Work Supervisor's Reports dated 9/1/02, 10/1/02 and 11/1/02, the prisoner's work performance declined due to his attitude towards his supervisor and staff, his interest in his respective assigned work, teamwork building participation and quality of work. His supervisor comments were: Inmate Montez continued to actively pursue a transfer out of the Assembly Shop and has not worked since his last report dated 10/02. His quarterly report periods from 11/01/02 to 8/1/03 dated 2/1/03, 5/1/03 and 8/1/03, reflect improvement grades of satisfactory to above average work grades. In addition, during this review period, Montez enrolled in an Independent Study Program through Coastline Community College and was unable to complete the semester. However, he enrolled into the Federal Emergency Management Agency Institute, which is an independent study course. He earned two (2) Certificates of Achievement dated 11/13/03, in Radiological Emergency Management and Emergency Preparedness, USA dated 10/17/03. Finally, there are no documents in the Central File to reflect any vocational training upgrading experience during this review period.
- C. Therapy and Self-Help Activities: Participation in Narcotics Anonymous per CDC 128B dated 7/2/01, 7/10/01, 10/01/01, 10/2/01, 1/11/02, 1/17/02, 2/15/02, 3/29/02, 4/11/02, 07/01/02, 07/17/02, 10/01/02, 10/16/02, 12/21/02, 1/8/03, 4/23/03 and 5/6/03.

Participated in the donation drive for the American Red Cross in response to the terrorist attacks of September 11, 2001 in New York, Pennsylvania and Washington D.C. per CDC 128 dated 12/13/01.

Participated in and completed the Muslim Development Center's Anger Management Course per CDC 128B dated 2/20/02.

Successfully completed a thirteen-week Impact workshop - self-help group designed to provide education and awareness relative to the profound negative impact of crime and its affect on victims and the ripple effect on society per CDC 128-B dated 12/16/02.

- D. Disciplinary History: None during this review period. However, (7) CDC 115's and (4) 128-A's are noted.

CDC 128A's

11/06/84	CTF	Unauthorized Covering on Window.
08/19/85	CTF	Failure to Report to Work.
11/21/86	CTF	Unexcused Absence from School.
05/26/89	CMC-East	Broken Window in Cell.

CDC 115's

10/22/82	FOL	Possession of Marijuana. Disposition: Guilty. 10 days disciplinary detention suspended, plus 90 days screen visits.
12/29/82	FOL	Possession of Marijuana. Disposition: Guilty. 10 days disciplinary detention plus 90 days screen visits.
06/25/83	FOL	Out of Cell Without Authorization. Disposition: Guilty. Counseled and reprimanded.
03/03/86	CTF	Possession of Contraband Shirt. Charged \$8.50 plus 30 days loss of yard privileges.
01/09/89	CMC	Non-Performance (work). Disposition: Guilty, 15 days loss of credit.
02/12/92	CRC	Positive U/A for Opiates. Disposition: Guilty, 150 days loss of credit plus 120 days loss of contact visiting.
09/16/93	CRC	Non Performance (work). Disposition: Guilty, assessed 10 hours extra duty.

- E. Other: On 6/20/02, Montez was seen by the Board of Prison Terms for his Subsequent Parole Consideration Hearing #6. The Board's decision was to deny

parole for (2) years, and recommend that the prisoner remain disciplinary free and participate in narcotic anonymous self-help and therapy programs.

#### IV. FUTURE PLANS:

- A. Residence: The prisoner indicates that his parole plans have changed. His plans are to live at the Freedom House, located at 460 South "F" Street, Oxnard, CA 93030. Telephone: 805-483-8343. Contact person: Jeff Simpson, Administrator. This facility is a 90-day clean and sober living environment for men. A letter of conditional acceptance was noted in the Central File dated 5/30/03. If released from prison, Montez states that he wants to make it on his own merit out in the free world, without the assistance or help of his family. However, he states that updated letters of support from his family and friends are forthcoming.
- B. Employment: Remains the same as indicated in the previous Board Report dated 6/2002. In addition, the prisoner completed 915 hours and received a Certificate of Legal Assistant/ Paralegal from the Blackstone School of Law Paralegal Studies, Inc. dated 11/9/01, at Dallas, Texas. During this interview, the prisoner did not offer a job reference, however, he feels confident that he will secure employment once he is released. His secondary plans are to work in the oil fields around in the state.
- C. Assessment: At the present time, the prisoner's parole plans appears stable at this time. Montez indicates that his plans are to reside in a residential home with a 12 step program that offers a sober and clean living environment for drug and alcohol offenders. He also indicates, once he completes this program, he will be able to secure employment and become independent to reintegrate back into society. He has acquired skills in welding, plumbing, furniture assembly (standard line and semi-custom), roofing, cement finisher and upholstery repair. He received a Certificate from the Blackstone Paralegal Studies, Inc., as a legal assistant/paralegal by completing 915 hours of correspondence studies. However, Montez did not offer a job reference at this time, he feels confident that he will secure employment once he is released.

#### V. USINS STATUS: N/A.

#### VI. SUMMARY:

- A. Considering the commitment offense, prior record and prison adjustment, this writer believes the prisoner would probably pose a low degree of threat to the public at this time, if released from prison. This impression is based on the

LIFE PRISONER EVALUATION REPORT  
PAROLE CONSIDERATION HEARING  
JUNE 2004 CALENDAR

5

prisoner's disciplinary history for eleven years, his stable work record, participation in self-help programs and his efforts of educational upgrading experience during this review period. While discussing the facts of the crime, Montez was candid when expressing remorse for the victim, and makes no excuses for his behavior. He realizes that his action's is what lead to the demise of the victim. He indicates that he must prove to himself and society thereby earning society's trust, in order to integrate back into free world in the future. He expressed the need to continue A.A. and N.A. counseling in order to eliminate the unnecessary stressors in his life. In terms of employment, the prisoner has acquired skills in welding, plumbing, furniture assembly (standard line and semi-custom), roofing, cement finisher and upholstery repair. He has a GED, and has earned a certificate as a legal assistant and paralegal. Montez indicates, once he is released, he is confident that he will secure employment and use the tools that he has gained and experienced to become a positive member of society.

- B. Prior to release the prisoner could benefit from:
  - 1) Remaining disciplinary free,
  - 2) Participate in Narcotics Anonymous Self-Help Programs and therapy programs.
- C. This report is based upon an interview with the prisoner on 3/25/04 lasting approximately 1.5 hours and a complete review of the Central File lasting 3 hours.
- D. Montez was afforded an opportunity to examine his Central File on 3/25/04 per the Olson decision per CDC 128B.
- E. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.



BOARD OF PRISON TERMS

STATE

OF CALIFORNIA

## LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

## INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, i.e., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
07/01 to 6/02			<p><b>PLACEMENT:</b> Remained at the Correctional Training Facility - II and housed in the general population.</p> <p><b>CUSTODY:</b> Medium A.</p> <p><b>VOC. TRAINING:</b> None during this review period.</p> <p><b>ACADEMICS:</b> None noted this review period.</p> <p><b>WORK RECORD:</b> Assigned to the PIA Wood Furniture Factory Assembly Shop. There are no work supervisor reports in the Central File noting work performance during this period.</p> <p><b>GROUP ACTIVITIES:</b> Participated in N/A per CDC 128B's dated 7/10/01, 10/01/01, 10/02/01, 1/11/02, 1/17/02, 2/15/02, 3/29/02 and 4/11/02. Participated in and completed the Muslim Development Center's Anger Management Course per CDC 128B dated 2/20/02.</p> <p><b>PSYCH. TREATMENT:</b> None during this review period.</p> <p><b>PRISON BEHAVIOR:</b> None during this review period.</p> <p><b>OTHER:</b> N/A.</p>
			DATE
MONTEZ, VICTOR	C48215	CTF-SOLEDAD	JUN/2004

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

## CONTINUATION SHEET: LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

STCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
06/02 to 06/03			<p><b>PLACEMENT:</b> Remained at the Correctional Training Facility- II and housed in the general population.</p> <p><b>CUSTODY:</b> Medium A</p> <p><b>VOC. TRAINING:</b> None during this review period.</p> <p><b>ACADEMICS:</b> None during this rating period.</p> <p><b>WORK RECORD:</b> Assigned to the PIA Wood Furniture Assembly Shop. He earned above average work grades and received exceptional grades for the use of tools and equipment per CDC 101 dated 7/1/02. However, a CDC 101 dated 9/1/02, reflects the prisoner's performance declined due to his attitude toward his supervisor and staff, his interest in his respective assigned work, teamwork building and participation and quality of work. His supervisor comments: Montez continues to "opt out" of work, whenever he is given the chance, as noted a CDC 101 dated 11/01/02. He continues to actively pursue a transfer and has not worked since his last report per CDC 101 dated 11/1/02.</p> <p><b>GROUP ACTIVITIES:</b> Participated in NA per CDC 128B's dated 7/17/02, 7/1/02, 10/1/02, 10/16/02, 12/1/02, 1/8/03, 4/23/03, and 5/6/03. He completed a thirteen week Impact workshop self help group designed to provide education and awareness relative to the profound negative impact of crime and its affect on victims and the ripple effect on society per CDC 128B dated 12/16/02.</p> <p><b>PSYCH. TREATMENT:</b> None during this review period.</p> <p><b>PRISON BEHAVIOR:</b> None during this review period.</p> <p><b>OTHER:</b> On 6/20/02, Montez was seen by the Board of Prison Terms for his Subsequent Parole Consideration Hearing #6. The Board's decision was to deny parole for (2), and recommend that the prisoner remain disciplinary free and participate in Narcotic Anonymous self-help and therapy programs.</p>

## ORDER:

- |                          |                      |         |                          |                                   |
|--------------------------|----------------------|---------|--------------------------|-----------------------------------|
| <input type="checkbox"/> | BPT date advanced by | months. | <input type="checkbox"/> | BPT date affirmed without change. |
| <input type="checkbox"/> | PBR date advanced by | months. | <input type="checkbox"/> | PBR date affirmed without change. |

## SPECIAL CONDITIONS OF PAROLE:

- ☐ Previously imposed conditions affirmed.
- ☐ Add or modify
- ☐ Schedule for Progress Hearing on appropriate institutional calendar

MONTEZ, VICTOR

C48215

CTF-SOLEDAD

JUN/2004

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

## CONTINUATION SHEET: LIFE PRISONER : POSTCONVICTION PROGRESS REPORT

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
6/03 to 3/31/04 (Present)			<p><b>PLACEMENT:</b> Remained at the Correctional Training Facility- II and housed in the General Population.</p> <p><b>CUSTODY:</b> Medium A</p> <p><b>VOC. TRAINING:</b> None noted during this review period.</p> <p><b>ACADEMICS:</b> Enrolled into the Federal Emergency Management Agency Institute and completed (2) independent study courses and received Certificate(s) of Achievement in - Emergency Preparedness, USA dated 10/17/03 and Radiological Emergency Management dated 11/13/03.</p> <p><b>WORK RECORD:</b> The prisoner remained assigned to the PIA Wood Furniture Assembly Factory. His attitude changed and his work performance reflected satisfactory work grades per CDC 101 dated 5/01/03, and 8/1/03.</p> <p><b>GROUP ACTIVITIES:</b> None noted during this review period.</p> <p><b>PSYCH. TREATMENT:</b> None noted during this review.</p> <p><b>PRISON BEHAVIOR:</b> None noted during this review.</p> <p><b>OTHER:</b> N/A.</p>

## ORDER:

- |                          |                      |         |                          |                                   |
|--------------------------|----------------------|---------|--------------------------|-----------------------------------|
| <input type="checkbox"/> | BPT date advanced by | months. | <input type="checkbox"/> | BPT date affirmed without change. |
| <input type="checkbox"/> | PBR date advanced by | months. | <input type="checkbox"/> | PBR date affirmed without change. |

## SPECIAL CONDITIONS OF PAROLE:

- ☐ Previously imposed conditions affirmed.
- ☐ Add or modify
- ☐ Schedule for Progress Hearing on appropriate institutional calendar

MONTEZ, VICTOR

C48215

CTF-SOLEDAD

JUN/2004

BOARD OF PRISON TERMS

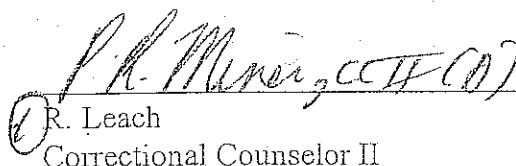
STATE OF CALIFORNIA



H. Staten  
Correctional Counselor I

7-14-04

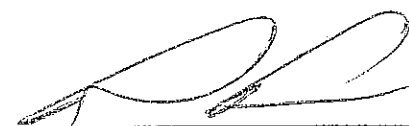
Date



R. Leach  
Correctional Counselor II

7-14-04

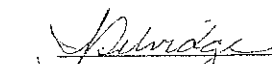
Date



R. Pope  
Facility Captain

7-16-04

Date



4) D. S. Levorse  
Classification and Parole Representative

7-16-04

Date

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

## LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

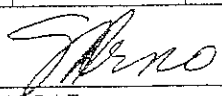
- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

ADDENDUM

## INSTRUCTIONS

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POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
4/04 to 4/05			<p><b>PLACEMENT:</b> CTF.</p> <p><b>CUSTODY:</b> Medium A.</p> <p><b>VOC. TRAINING:</b> None noted during this period.</p> <p><b>ACADEMICS:</b> None noted during this period.</p> <p><b>WORK RECORD:</b> Inmate Montez continued as a Furniture Assembler and received exceptional and above average ratings in various categories on his work supervisor's reports.</p> <p><b>GROUP ACTIVITIES:</b> He continued his participation in A.A/N.A Program. On 6/10/04 Montez received a CDC 128B laudatory chrono. for his participation in the Inmate Employability Program.</p> <p><b>PSYCH. TREATMENT:</b> None during this review period.</p> <p><b>PRISON BEHAVIOR:</b> Inmate Montez remained disciplinary free during this period.</p> <p><b>OTHER:</b> None.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE			DATE
			5/12/05
MONTEZ, VICTOR		C48215	CTF-SOLEDAD

COPY TO INMATE ON  
May 18, 2005

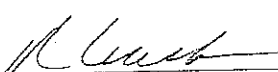


LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

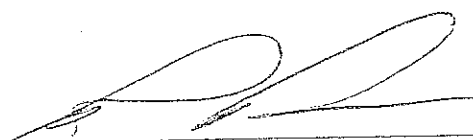
ADDENDUM

  
S. Arno  
Correctional Counselor I

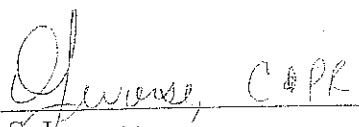
5/12/05  
Date

  
R. Leach  
Correctional Counselor II

5/12/05  
Date

  
R. Pope  
Facility Captain

5-13-05  
Date

  
D.S. Levorse  
Classification and Parole Representative

5-17-05  
Date

MONTEZ

C48215

CTF-SOLEDAD

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

## LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

ADDENDUM

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POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
4/05 to 4/06 (Present)			<p><b>PLACEMENT:</b> CTF.</p> <p><b>CUSTODY:</b> Medium A.</p> <p><b>VOC. TRAINING:</b> None noted during this period.</p> <p><b>ACADEMICS:</b> None noted during this period.</p> <p><b>WORK RECORD:</b> He continued his assignment as a Furniture Assembler in the P.I.A. Wood Products section and received exceptional and above average ratings in various categories on his Work Supervisor's Reports.</p> <p><b>GROUP ACTIVITIES:</b> Inmate Montez continued his fine participation in the AA Program per several CDC 128B laudatory chronos.</p> <p><b>PSYCH. TREATMENT:</b> None noted during this period.</p> <p><b>PRISON BEHAVIOR:</b> He remained disciplinary free during this period.</p> <p><b>OTHER:</b> None.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE			DATE

MONTEZ, VICTOR

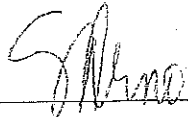
C48215

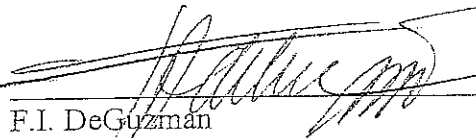
CTF-SOLEDAD


4/25/06

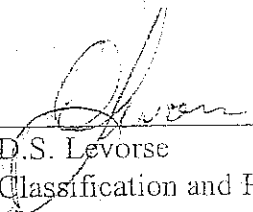
LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

ADDENDUM

 4/25/06  
S. Arno Date  
Correctional Counselor I

 5-2-06  
F.I. DeGuzman Date  
Correctional Counselor II (A)

 5-3-06  
R. Pope Date  
Facility Captain

 5-5-06  
D.S. Levorse Date  
Classification and Parole Representative

MONTEZ, VICTOR

C48215

CTF-SOLEDAD

**EXHIBIT**

**"8"**

**MENTAL HEALTH EVALUATION FOR  
THE BOARD OF PRISON HEARINGS  
May, 2006 Lifer Calendar**

**CORRECTIONAL TRAINING FACILITY SOLEDAD  
MAY, 2006**

**NAME:** MONTEZ, VICTOR  
**CDC#:** C-48215  
**DOB:** 7/6/53  
**OFFENSE:** PC 187 MURDER, SECOND DEGREE  
**DATE OF OFFENSE:** 8/9/80  
**SENTENCE:** 17 YEARS TO LIFE  
**MEPD:** 4/9/90  
**EVALUATION DATE:** 5/11/06

**I. IDENTIFYING INFORMATION:**

Mr. Victor Montez is a 52 year old, first term, divorced, Hispanic male. He is a Christian. He has served 25 years on his sentence.

**SOURCES OF INFORMATION:**

This evaluation is based upon a single 90 minute interview, plus review of the central and medical files.

The psychological evaluation, written on 6/20/00, at CTF-Soledad for the BPT by Dr. Terrini, Psychologist, contains a Psychosocial Assessment. This information was reviewed with the inmate and is still current and valid. As a result, this information will not be repeated at this time.



MONTEZ, VICTOR

C-48215

5/11/06

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### CLINICAL ASSESSMENT

#### XII. CURRENT MENTAL STATUS/TREATMENT NEEDS

Mr. Montez related during the interview in a serious, outgoing, friendly and cooperative manner. His mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. His affect was appropriate. There was no evidence of anxiety or of depression. His eye contact was good. Intellectually, he was functioning in the average ranges. His memory was intact. His judgment was intact. His insight and self-awareness were very good.

Mr. Montez has a criminal background associated with his heroin addiction. He continues to attend Alcoholics Anonymous. He has not used drugs since 1992, when he last received a positive urinalysis test. He has been clean and sober now for 14 years. Mr. Montez is very aware of the destructive effects of drugs or of alcohol in a person's life. He is aware of the importance of remaining clean and sober. He is very active in Bible studies. His understanding and knowledge of the Bible are significant and considerable. He has incorporated Biblical values into his life. As a result, he is determined to lead a wholesome, helpful to others, productive life, that pleases both God and man. Use of drugs is no longer a problem in his life. It certainly is not a current diagnostic problem.

He has acquired significant vocational skills. He has experience as a welder, working with the arc and gas. He also is certified in Vocational Office Machine Repair. He has worked as a plumber. He is working now in PLA Furniture Manufacturing. He also has worked as a heavy equipment operator in the past. He also attended Blackstone School of Law and is certified as a paralegal. In addition to this achievement, he has completed the Inmate Employability Program, Finding Employment, sponsored by Prison Industries Authority. He continues to attend Alcoholics Anonymous. He has his GED. He also has completed Anger Management.

In the past, based upon his criminal history, Mr. Montez has been diagnosed as having an Anti-Social Personality Disorder. At this point in his life there is no evidence of any antisocial thinking or values. His values are solidly pro-social. He has deep feelings of concern and empathy towards others. Therefore, this is no longer an appropriate diagnostic label.

MONTEZ, VICTOR

C-48215

5/11/06

PAGE 3

**CURRENT DIAGNOSTIC IMPRESSION**

Axis I: No mental disorder  
Axis II: No personality disorder  
Axis III: No physical disorder  
Axis IV: Life term incarceration  
Axis V: Current GAF: 90

**XIII. REVIEW OF LIFE CRIME**

Mr. Montez accepts full responsibility for the commitment offense. He put a gun to the victim's head in an effort to rob him. The victim's elbow hit the gun, and it went off accidentally. He stated that he did not intend to hurt the victim. He does take full responsibility for the victim's death. He stated that due to his actions, and the victim's loss of his life, the victim's family has suffered. He commented how he understands how the victim's family has never been able to recover from their suffering due to the victim's loss of life. He knows this, because he has developed insight into what the family feels when they lose a loved one. He lost a brother in a similar situation. The family is still suffering from this loss. His feelings of remorse appear to be sincere and genuine.

He stated that he had become a Christian through the ministry of Victory Outreach prior to this offense. He stated that he had begun to backslide. He stated that because he was disobedient to God and God's expectations for his life, he was a disobedient child and God placed him in a situation, where he would have ample opportunity to study the Bible, explore his own life, seek forgiveness for his sins, and grow spiritually. He stated that he believes that when this process in which he must continue to grow and advance spiritually is finished, God will allow him to be released from prison.

**XIV. ASSESSMENT OF DANGEROUSNESS**

- A. In considering potential for dangerous behavior in the institution, he has remained disciplinary free for over 12 years. Prior to that time, he did receive disciplinaries for possession of marijuana and use of heroin. At that point in time, his potential for dangerous behavior was higher. However, due to his years of being disciplinary free, he no longer poses a risk to the institution; and compared to other inmates, his potential for dangerous behavior is below average.
- B. In considering potential for dangerous behavior when released to the community, the Level of Service Inventory-Revised was administered.

MONTEZ, VICTOR

C-48215

5/11/06

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This is an actuarial measure that assesses criminal history, substance abuse history, institutional adjustment, social relationships and other factors to determine current risk level on parole. He obtained a score of 5.1 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 95 of them. This is a low risk score. At this point in his life, due to his maturity, growth, and increased insight, he poses no more risk to society than the average citizen in the community. In fact, based upon the positive changes in his life, he probably poses less risk to society than the average citizen.

C. There are no significant risk factors in this case.

**XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS**

There are no mental or emotional problems in this case that would interfere with routine parole planning. This man has a supportive family in the community. He plans on living with his mother in Oxnard. He also has developed job offers in the community. He also has letters in the file, indicating that he has been accepted for placement in a residential substance abuse program. He has numerous vocational skills that will enable him to maintain work in the community. All of these positive factors are strong indicators that he will do well on parole. The prognosis for successful adjustment in the community is excellent.

*M. Macomber Ph.D.*

M. Macomber, Ph.D.  
Correctional Psychologist  
Correctional Training Facility, Soledad

*B. Zika, Ph.D.*

B. Zika, Ph.D.  
Senior Psychologist  
Correctional Training Facility, Soledad

D: 5/11/06

T: 5/12/06

# EXHIBIT 9

Westlaw

701 N.W.2d 763

Page 1

701 N.W.2d 763  
(Cite as: 701 N.W.2d 763)

**H**

Briefs and Other Related Documents

Supreme Court of Minnesota.  
Richard James CARRILLO, Appellant,  
v.  
Joan FABIAN, Commissioner of Corrections,  
Respondent.  
No. A03-1663.

July 28, 2005.

**Background:** Petitioner sought habeas review of disciplinary action taken by Department of Corrections (DOC). The District Court, Washington County, denied petition, and petitioner appealed. The Court of Appeals affirmed, and petitioner sought further review.

**Holdings:** The Supreme Court, Paul H. Anderson, granted petition for review and held that:

8(1) petitioner had protected liberty interest in his supervised release date triggering right to procedural due process prior to extension of that date as result of prison disciplinary proceeding;

21(2) "some evidence" standard employed by DOC in prison disciplinary proceedings was inappropriate for use at fact-finding level of proceedings having potential to affect inmate's liberty interest in his supervised release date; and

22(3) preponderance of the evidence standard was appropriate for use by DOC at fact-finding level in such proceedings.

Reversed.

Page, J., concurred with opinion.

Blatz, C.J., dissented with opinion in which

Anderson, Russell, J., joined.

West Headnotes

[1] Criminal Law 110 ⇨ 1139

110 Criminal Law

110XXIV Review

110XXIV(L) Scope of Review in General

110k1139 k. Additional Proofs and Trial

De Novo. Most Cited Cases

Whether due process is required in a particular case is a question of law, which the Supreme Court reviews de novo. U.S.C.A. Const.Amend. 14.

[2] Prisons 310 ⇨ 4(1)

310 Prisons

310k4 Regulation and Supervision

310k4(1) k. In General. Most Cited Cases

While a prison inmate does not enjoy the full range of rights and privileges available to ordinary citizens, he does not surrender all of his constitutional rights upon incarceration.

[3] Constitutional Law 92 ⇨ 272(2)

92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and

Incidents Thereof. Most Cited Cases

Inmates are entitled to some degree of protection under the Due Process Clause: thus, prison authorities must provide inmates with an



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appropriate level of due process before they are deprived of a protected liberty interest. U.S.C.A. Const.Amend. 14.

[4] Constitutional Law 92 ¶255(1)

92 Constitutional Law

92XII Due Process of Law

92k255 Deprivation of Life or Liberty in General

92k255(1) k. In General. Most Cited Cases

Constitutional Law 92 ¶278(1)

92 Constitutional Law

92XII Due Process of Law

92k278 Deprivation of Property in General

92k278(1) k. In General. Most Cited Cases

When engaging in a due process analysis, a court must conduct two inquiries: first, the court must determine whether the complainant has a liberty or property interest with which the state has interfered; second, if the court finds a deprivation of such an interest, it must determine whether the procedures attendant upon that deprivation were constitutionally sufficient. U.S.C.A. Const.Amend. 14.

[5] Constitutional Law 92 ¶254.1

92 Constitutional Law

92XII Due Process of Law

92k254.1 k. Liberties and Liberty Interests Protected. Most Cited Cases

Though the range of liberty interests protected by procedural due process is broad, it is not infinite. U.S.C.A. Const.Amend. 14.

[6] Constitutional Law 92 ¶254.1

92 Constitutional Law

92XII Due Process of Law

92k254.1 k. Liberties and Liberty Interests Protected. Most Cited Cases

Constitutionally-protected liberty interest arises from a legitimate claim of entitlement rather than simply an abstract need or desire or a unilateral expectation. U.S.C.A. Const.Amend. 14.

[7] Constitutional Law 92 ¶272(2)

92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

Prisons 310 ¶13(2)

310 Prisons

310k13 Custody and Control of Prisoners

310k13(2) k. Discipline, Security, and Confinement. Most Cited Cases

For purposes of due process analysis, it was inappropriate to analyze inmate's liberty interest in his supervised release date by looking solely to statutory language; rather, the Supreme Court was required to examine nature of deprivation resulting from disciplinary action forming basis of inmate's complaint and extent to which that deprivation departed from basic conditions of inmate's sentence. U.S.C.A. Const.Amend. 14; M.S.A. §§ 244.05, 244.101.

[8] Constitutional Law 92 ¶272(2)

92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

Prisons 310 ¶13(2)

310 Prisons

310k13 Custody and Control of Prisoners

310k13(2) k. Discipline, Security, and Confinement. Most Cited Cases

Inmate had protected liberty interest in his supervised release date, under Due Process Clause of United States Constitution, triggering right to procedural due process prior to extension of that date as result of prison disciplinary proceeding, where statutory sentencing scheme provided that inmate was to be released on date specified at his sentencing unless he committed prison disciplinary

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offense and finding that inmate committed disciplinary offense would inevitably affect length of his term of imprisonment, as extension of his date of release would be immediate consequence of disciplinary action. U.S.C.A. Const.Amend. 14; Minn.Stat. §§ 244.05, 244.101.

[9] Constitutional Law 92 ⇨ 272(2)

92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

For purposes of due process analysis, under Minnesota's current sentencing scheme, there is a presumption from the moment that a court imposes and explains a defendant's sentence that the defendant will be released from prison on a certain date, and that presumption is overcome only if the defendant commits a disciplinary offense while in prison. U.S.C.A. Const.Amend. 14.

[10] Constitutional Law 92 ⇨ 270(5)

92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k270 Judgment and Sentence

92k270(5) k. Probation or Suspension of Sentence. Most Cited Cases

Sentencing and Punishment 350H ⇨ 1943

350H Sentencing and Punishment

350HIX Probation and Related Dispositions

350HIX(F) Disposition of Offender

350Hk1942 Duration

350Hk1943 k. In General. Most Cited Cases

Inmate's liberty interest in his supervised release date was not equivalent of "right" to, specific minimum supervised release term. U.S.C.A. Const.Amend. 14; M.S.A. § 244.101, subd. 3.

[11] Constitutional Law 92 ⇨ 272(2)

92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

For purposes of due process analysis, any extension of an inmate's period of imprisonment represents a significant departure from the basic conditions of the inmate's sentence. U.S.C.A. Const.Amend. 14.

[12] Evidence 157 ⇨ 596(1)

157 Evidence

157XIV Weight and Sufficiency

157k596 Degree of Proof in General

157k596(1) k. In General. Most Cited Cases

Purpose of a standard of proof for a particular type of adjudication is to instruct the fact finder on the degree of confidence society desires the fact finder to have in the correctness of his or her conclusions.

[13] Evidence 157 ⇨ 596(1)

157 Evidence

157XIV Weight and Sufficiency

157k596 Degree of Proof in General

157k596(1) k. In General. Most Cited Cases

Three basic standards of proof exist: preponderance of the evidence; clear and convincing; and beyond a reasonable doubt.

[14] Prisons 310 ⇨ 13(7.1)

310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

310k13(7.1) k. In General. Most Cited Cases

"Some evidence" standard employed by the Department of Corrections (DOC) in hearings on major violations of prison disciplinary rules allows a hearing officer to find that an inmate violated a disciplinary rule if there is some credible evidence presented to show that the inmate committed the offense charged.

[15] Prisons 310 ⇨ 13(7.1)

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### 310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

310k13(7.1) k. In General. Most Cited

#### Cases

As a standard of proof, the "some evidence" employed by the Department of Corrections (DOC) in hearings on major violations of prison disciplinary rules is much less exacting than the preponderance of the evidence standard used in civil cases.

[16] Prisons 310 ⇨ 13(10)

### 310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

310k13(10) k. Review and Judicial

#### Supervision. Most Cited Cases

"Some evidence" standard, as applicable with respect to prison disciplinary proceedings, is a standard of appellate review, not a standard of proof.

[17] Constitutional Law 92 ⇨ 272(2)

### 92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

Prisons 310 ⇨ 13(7.1)

### 310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

310k13(7.1) k. In General. Most Cited

#### Cases

For purposes of due process analysis, private interest affected by use by Department of Corrections (DOC) of "some evidence" standard in prison disciplinary proceedings was inmate's protected liberty interest in his date of supervised release, where as direct result of DOC hearing officer's determination that inmate had engaged in disorderly conduct, inmate had seven days added to his term of incarceration. U.S.C.A. Const.Amend. 14.

[18] Constitutional Law 92 ⇨ 272(2)

### 92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

Prisons 310 ⇨ 13(7.1)

### 310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

310k13(7.1) k. In General. Most Cited

#### Cases

For purposes of due process analysis, risk of erroneous deprivation resulting from use by Department of Corrections (DOC) of "some evidence" standard in prison disciplinary proceedings in having potential to affect inmate's liberty interest in his supervised release date was high, where procedural safeguards provided by DOC's rules, including notice and opportunity to respond, were of no value in light of prison authorities' ability to extend inmate's term of incarceration even if balance of evidence failed to prove that inmate committed charged offense. U.S.C.A. Const.Amend. 14.

[19] Constitutional Law 92 ⇨ 272(2)

### 92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

Prisons 310 ⇨ 13(7.1)

### 310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

310k13(7.1) k. In General. Most Cited

#### Cases

For purposes of due process analysis, government interests affected by use by Department of Corrections (DOC) of "some evidence" standard in

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prison disciplinary proceedings were interests in assuring safety of inmates and employees, avoiding burdensome administrative requirements that might be susceptible to manipulation, and promotion of fair procedures. U.S.C.A. Const.Amend. 14.

[20] Constitutional Law 92 ⇨ 272(2)

92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

Prisons 310 ⇨ 13(7.1)

310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

310k13(7.1) k. In General. Most Cited

Cases

For purposes of due process analysis, government's interest in promotion of fair disciplinary procedures in its prisons weighed against use by Department of Corrections (DOC) of "some evidence" standard in prison disciplinary proceedings having potential to affect inmate's liberty interest in his supervised release date, especially where government derived no benefit from disciplining inmates who committed no offense; effect of DOC's use of "some evidence" standard was to imply that once any individual is convicted of a crime, he or she is presumed guilty of every subsequent allegation. U.S.C.A. Const.Amend. 14.

[21] Constitutional Law 92 ⇨ 272(2)

92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

Prisons 310 ⇨ 13(7.1)

310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

310k13(7.1) k. In General. Most Cited

Cases

"Some evidence" standard employed by Department of Corrections (DOC) in prison disciplinary proceedings was inappropriate for use at fact-finding level in disciplinary proceedings having potential to affect inmate's liberty interest in his supervised release date.

[22] Constitutional Law 92 ⇨ 272(2)

92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

Prisons 310 ⇨ 13(7.1)

310 Prisons

310k13 Custody and Control of Prisoners

310k13(7) Requisites of Proceedings

310k13(7.1) k. In General. Most Cited

Cases

Preponderance of the evidence standard was appropriate for use by Department of Corrections (DOC) at fact-finding stage of prison disciplinary proceedings having potential to affect inmate's liberty interest in his supervised release date, as such standard better protected against erroneous deprivation of inmate's liberty interest in his supervised release date than did use of "some evidence" standard and did not impose unacceptable burden on DOC. U.S.C.A. Const.Amend. 14.

[23] Constitutional Law 92 ⇨ 272(2)

92 Constitutional Law

92XII Due Process of Law

92k256 Criminal Prosecutions

92k272 Execution of Sentence

92k272(2) k. Imprisonment and Incidents Thereof. Most Cited Cases

Prisons 310 ⇨ 13(7.1)

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### 310 Prisons

#### 310k13 Custody and Control of Prisoners

##### 310k13(7) Requisites of Proceedings

##### 310k13(7.1) k. In General. Most Cited

#### Cases

Principles of due process entitled inmate to have Department of Corrections (DOC) hearing officer find by preponderance of the evidence that inmate committed disciplinary offense prior to extension of date of his supervised release on basis of his having committed such offense. U.S.C.A. Const.Amend. 14

#### \*766 Syllabus by the Court

Under the Due Process Clause of the United States Constitution, a Minnesota prison inmate has a protected liberty interest in his supervised release date that triggers a right to procedural due process before that date can be extended for violating a disciplinary rule.

The "some evidence" standard of proof is inappropriate for use by the Department of Corrections at the fact-finding level; rather, a Department of Corrections fact finder must find by a preponderance of the evidence that an inmate has violated a disciplinary rule before the Commissioner of Corrections can extend the inmate's date of supervised release for the rule violation.

Mike Hatch, Minnesota State Attorney General, Elizabeth Richter Schaffer, Jennifer A. Service, Assistant Attorneys General, St. Paul, MN, for Respondent.

Mikael Merissa, Teresa Nelson, ACLU of Minnesota, St. Paul, MN, for Amicus Curiae ACLU of Minnesota.

Heard, considered, and decided by the court en banc.

#### OPINION

ANDERSON, PAUL H., Justice.

Appellant Richard Carrillo seeks review of a Minnesota Court of Appeals decision affirming the Washington County District Court's denial of his petition for writ of habeas corpus. Carrillo argues that the Commissioner of Corrections violated his

constitutional rights by failing to provide him with sufficient procedural due process before extending his period of imprisonment by seven days. The commissioner extended Carrillo's incarceration time after a Department of Corrections (DOC) hearing officer found that Carrillo committed the disciplinary offense of disorderly conduct. In finding that Carrillo had engaged in disorderly conduct, the hearing officer used the following standard of proof specified by the DOC's policy: "some evidence in the record to support the charged violation of the offender disciplinary regulations." We reverse.

On November 23, 1999, a jury convicted appellant Richard Carrillo of the offense of drive-by shooting for the benefit of a gang. The district court convicted him of this offense and imposed an executed sentence of 114 months. At sentencing, Carrillo was informed that he would serve two-thirds of his time in prison and one-third on supervised release unless he committed a disciplinary offense. See Minn.Stat. § 244.101, subds. 1-2 (2004). Carrillo is incarcerated at the Minnesota Correctional Facility at Earibault (MCFF).

On May 24, 2002, a fight broke out at MCFF while Carrillo was on the prison baseball field with several other inmates. As a result of the fight, the prison guards called the inmates back inside the prison living quarters. As Carrillo walked toward the living quarters with a group of about ten other inmates, one of the inmates in his group, Robert Mendez, fell to the ground.

Lieutenant Susan Williams was in charge of administering the prison that day in the warden's absence. Williams \*767 saw Mendez fall and filed an incident report in which she stated that Carrillo had shoved Mendez to the ground. Carrillo was given a Notice of Violation that stated that he was charged with violating Offender Discipline Regulations 320 and 412-disorderly conduct and assault of an inmate. A disciplinary hearing was held on June 5, 2002, before a DOC hearing officer. Carrillo was not represented by counsel at that hearing, although he did have a right to have a "representative" assist him in the preparation and



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presentation of his case.

At the hearing, Williams was the only witness to testify for the commissioner. She stated that she saw a white inmate put his hands on another inmate's shoulders and push him to the ground. She said she "couldn't identify [the inmate] that had gotten pushed," but that there was "no doubt in [her] mind" that Carrillo pushed the inmate. She testified that she identified Carrillo by his clothing and by "watch[ing] where he was walking." The record reflects that at the time of the incident, Carrillo wore a white t-shirt, gray sweatpants, and tennis shoes-the same outfit worn by all of the other inmates who were playing baseball.

Williams said she could not identify Carrillo's face because she was about 50 yards away from the inmates when the pushing incident occurred, but she maintained constant visual contact with Carrillo from the time she saw the incident until he reached the door to the living quarters. After witnessing the incident, Williams radioed the guards at the living quarters building and told them that a white inmate wearing a white t-shirt and gray sweatpants was approaching the building. Williams instructed the guards that when "the next white person comes in \* \* \*, grab his ID." Based on Williams' information, the guards detained Carrillo.

Carrillo, Mendez, and a third inmate, Andrew McNalley, testified for Carrillo. Carrillo testified that he did not push anyone to the ground. Mendez testified that he stumbled and fell on his own while jogging toward the building and that no one shoved him. McNalley testified that he was present during the incident and that Mendez fell on his own and was not pushed.

In determining whether Carrillo had committed the disciplinary violations charged, the hearing officer relied on the standard of proof established by the DOC for major violations, which requires only that there be "some evidence in the record to support the charged violation of the offender disciplinary regulations." Minn. Dept. of Corr. Policy 303.010, H.<sup>FN1</sup> The hearing officer determined that Williams had clearly identified Carrillo as the person who pushed Mendez to the ground and that

Mendez and McNalley were not credible. The hearing officer then found that Carrillo committed the offense of disorderly conduct and imposed a punishment of 45 days in segregation.

FN1. The Department of Corrections policy in effect at the time of Carrillo's disciplinary hearing did not differentiate between major and minor disciplinary violations, and both were subject to the standard of proof of "some evidence in the record to support the charged violation of the offender disciplinary regulations." Minn. Dept. Corr. Policy 303.010, H. (2001). We note for purposes of comparison that as of February 1, 2005, the Department of Corrections differentiated between major and minor violations. Minn. Dept. Corr. Policy 303.010, F.; G. (2005). This differentiation has resulted in a dual standard: the some evidence standard of proof for major violations remains in place, but the standard of proof for minor violations was raised to "more likely than not that the offender violated the disciplinary regulation." *Id.* at F.6; G.3.

\*768 Carrillo appealed the hearing officer's decision to the warden, and the warden affirmed. As a direct result of the decision, Carrillo served 23 days in segregation, and the commissioner delayed Carrillo's supervised release date by seven days, from April 4 to April 11, 2006.

Carrillo brought a petition for a writ of habeas corpus in Washington County District Court, arguing that the commissioner violated his constitutional rights by extending his term of imprisonment without providing sufficient procedural due process. The district court denied Carrillo's petition on August 26, 2003. The court of appeals affirmed the district court, concluding that Carrillo had not shown a protected liberty interest in his release date, and that even if he had, he received all process due. *Carrillo v. Fabian*, 2004 WL 1049206 (Minn.App. May 11, 2004) (unpublished opinion). We granted Carrillo's

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petition for review.

I.

[1][2][3] Whether due process is required in a particular case is a question of law, which we review de novo. *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972); *Alcozer v. N. Country Food Bank*, 635 N.W.2d 695, 701 (Minn.2001). While a prison inmate does not enjoy the full range of rights and privileges available to ordinary citizens, he does not surrender all of his constitutional rights upon incarceration. *Wolff v. McDonnell*, 418 U.S. 539, 555, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). The United States Supreme Court has stated, "[t]here is no iron curtain drawn between the Constitution and the prisons of this country." *Id.* at 555-56, 94 S.Ct. 2963. Inmates are entitled to some degree of protection under the Due Process Clause; thus, prison authorities must provide inmates with an appropriate level of due process before they are deprived of a protected liberty interest. *Id.* at 556, 94 S.Ct. 2963.

[4] When engaging in a due process analysis, a court must conduct two inquiries. First, the court must determine whether the complainant has a liberty or property interest with which the state has interfered. *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989). Second, if the court finds a deprivation of such an interest, it must determine whether the procedures attendant upon that deprivation were constitutionally sufficient. *Id.*

[5][6] We first must determine whether Carrillo has a liberty interest in his supervised release date. The Due Process Clause of the U.S. Constitution provides that a state shall not "deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1. The Supreme Court has ruled that courts must look to the nature of an interest to determine if it is within the scope of the Fourteenth Amendment's protection of liberty and property. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 570-71, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); see also *Sandin v. Conner*,

515 U.S. 472, 484, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). Though the range of liberty interests protected by procedural due process is broad, it is not infinite. *Roth*, 408 U.S. at 570, 92 S.Ct. 2701. A constitutionally-protected liberty interest arises from a legitimate claim of entitlement rather than simply an abstract need or desire or a unilateral expectation. *Greenholtz v. Inmates of Neb. Penal and Corr. Complex*, 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979). Therefore, Carrillo must have a legitimate claim of entitlement to being released from prison on his supervised release date before his interest in being released on that date can qualify as a liberty interest.

\*769 The Supreme Court has held that state law can create liberty interests that are protected by due process. *Wolff*, 418 U.S. at 557, 94 S.Ct. 2963; *Sandin*, 515 U.S. at 483-84, 115 S.Ct. 2293. In *Wolff*, the Court held that while the Due Process Clause itself does not create a liberty interest in credit for good behavior, the statutory provision adopted by the state of Nebraska created a liberty interest in a shortened prison sentence that resulted from good time credits. 418 U.S. at 557, 94 S.Ct. 2963; see Neb.Rev.Stat. § 83-185 (1971). In Nebraska, good time credits were revocable only if the prisoner was found guilty of serious misconduct. Neb.Rev.Stat. § 83-185. In another case, the Court held that "the expectancy of release" provided in Nebraska's sentencing scheme was entitled to some measure of constitutional protection. *Greenholtz*, 442 U.S. at 12, 99 S.Ct. 2100. The Court concluded that some measure of protection was due to inmates whose parole requests were denied under a discretionary parole statute that provided that an inmate "shall" be released when his minimum term of imprisonment less good time credits expired. *Id.* at 11-12, 99 S.Ct. 2100.

Both parties and amicus curiae American Civil Liberties Union of Minnesota argue that we should look to the language of Minn.Stat. §§ 244.101 and 244.05 (2004), establishing Minnesota's determinate sentencing scheme, to determine whether the state has created a liberty interest in an inmate's date of supervised release. Carrillo and amicus argue, based on *Greenholtz*, that the use of

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mandatory language in Minnesota's statute establishes that Carrillo has a liberty interest in his supervised release date. Citing to *Greenholtz*, Carrillo argues that Minnesota's determinate sentencing scheme has triggered a similar expectancy of release from prison in inmates subject to that scheme. He asserts that the statute creates such an expectancy by requiring a sentencing court to explain the total length of a defendant's sentence, the amount of time the defendant will serve in prison, and the amount of time the defendant will serve on supervised release absent disciplinary offenses resulting in punishment while in prison. See Minn.Stat. § 244.101, subd. 2. Carrillo argues that the statute requires that a defendant be released from prison after serving two-thirds of his sentence, thereby establishing a liberty interest that is entitled to some measure of constitutional protection.

By contrast, the commissioner argues that Carrillo had no reasonable expectation that he would be released from prison on a specific date because the language of section 244.101, subd. 3 (2004), expressly provides that an inmate has no right to a specific, minimum length of a supervised release term. Additionally, the commissioner reasons that Carrillo's argument lacks merit because Minn.Stat. § 244.101, subd. 2, requires that the sentencing court explain to the defendant at the time of sentencing that "the amount of time the defendant actually serves in prison may be extended by the commissioner if the defendant commits any disciplinary offense in prison" and that such an extension "could result in the defendant's serving the entire executed sentence in prison." In the alternative, the commissioner contends that, if the *Greenholtz* mandatory language analysis remains intact, the statutes should be characterized as permissive because the length of an inmate's supervised release term is "subject to" the commissioner's authority to impose "any disciplinary confinement period" extending the term of imprisonment when the inmate has violated "any disciplinary rule adopted by the commissioner." Minn.Stat. §§ 244.101, subd. 1; 244.05, subd. 1b (2004).

\*770 Both parties focus too narrowly on the

language of sections 244.101 and 244.05 to establish or defeat an inmate's expectation of supervised release and the existence of a protectable liberty interest. Since its decisions in *Wolff* and *Greenholtz*, the Supreme Court has expressed its disapproval of the emphasis that courts have placed on the mandatory or discretionary nature of statutes in seeking to determine whether the state has created liberty interest. *Sandin*, 515 U.S. at 479-84, 115 S.Ct. 2293.

In *Sandin*, an inmate brought a civil rights action against prison officials in the state of Hawai'i, challenging the imposition of disciplinary segregation for misconduct. *Id.* at 476, 115 S.Ct. 2293. The Ninth Circuit Court of Appeals drew a "negative inference" from the mandatory language of the prison regulation at issue and then, based on that language, concluded that the inmate had a liberty interest in not being subjected to disciplinary segregation. *Id.* at 476-77, 115 S.Ct. 2293; see Haw. Admin. Rule § 17-201-18(b)(2) (1983). The Supreme Court expressed concern about the Ninth Circuit's analysis, not because the analysis was unreasonable, but rather because it was indicative of a broader problem. See *Sandin*, 515 U.S. at 481, 115 S.Ct. 2293.<sup>FN2</sup> The Court said:

FN2. The broader problem was rooted in the implicit reasoning of the Supreme Court's decision in *Greenholtz*, 442 U.S. at 11-12, 99 S.Ct. 2100, and made explicit in later cases. See, e.g., *Hewitt v. Helms*, 459 U.S. 460, 471-72, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983); *Olim v. Wakinekona*, 461 U.S. 238, 249-50, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983); *Thompson*, 490 U.S. at 454, 109 S.Ct. 1904.

By shifting the focus of the liberty interest inquiry to one based on the language of a particular regulation, and not the nature of the deprivation, the Court encouraged prisoners to comb regulations in search of mandatory language on which to base entitlements to various state-conferred privileges. Courts have, in response, and not altogether illogically, drawn negative inferences from mandatory language in the text of prison regulations.

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*Id.* (emphasis added). The Court then explained that "the search for a negative implication from mandatory language in prisoner regulations has strayed from the real concerns undergirding the liberty protected by the Due Process Clause." *Id.* at 483, 115 S.Ct. 2293.

The Supreme Court in *Sandin* did not overrule any prior decisions, but proclaimed that "[t]he time has come to return to the due process principles \* \* \* correctly established and applied in *Wolff* and *Meachum*." *Id.* The Court stated:

[State-created liberty] interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force \* \* \* nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.

*Id.* at 484, 115 S.Ct. 2293. Accordingly, the Court rejected the approach of focusing narrowly on the language of a particular statute, and instead focused its liberty analysis on the nature of the deprivation at issue; that is, the degree to which that deprivation caused a departure from the basic conditions of the inmate's sentence. *See id.* at 485, 115 S.Ct. 2293. <sup>FN3</sup>

FN3. The dissent, by making the language of Minn.Stat. § 244.101, subd. 3, the lynchpin of its analysis, effectively turns *Sandin* on its head. Instead of examining the nature of the deprivation at issue in the context of the statutory scheme as the Supreme Court in *Sandin* encouraged courts to do henceforth, the dissent allows the language of Minn.Stat. § 244.101, subd. 3, to entirely negate the possibility that there may have been a deprivation that implicates due process principles.

\*771 In *Sandin*, the Supreme Court noted that the inmate's segregated confinement did not exceed similar discretionary confinement in either duration or degree of restriction and did not inevitably lead to an extension of the inmate's overall period of

confinement. *Id.* at 486-87, 115 S.Ct. 2293. The Court noted that under the Hawai'i statute, the cause-effect relationship between the outcome of the disciplinary proceedings and any possible extension of an inmate's period of confinement is "simply too attenuated to invoke the procedural guarantees of the Due Process Clause." *Id.* at 487, 115 S.Ct. 2293. The Court stated that the decision to release the inmate rests on "a myriad of considerations," and the inmate is afforded procedural protections at a parole hearing during which he has an opportunity to explain the circumstances behind his misconduct. *Id.* Thus, the Court held that neither the prison regulation in question nor the Due Process Clause itself created a protected liberty interest that would entitle the inmate to the procedural protections set forth in *Wolff*. *Id.*

[7] Based on the due process principles articulated in *Sandin*, we conclude that it is inappropriate to analyze Carrillo's liberty interest by looking solely to statutory language; rather, we must examine the nature of the deprivation and the extent to which that deprivation departs from the basic conditions of Carrillo's sentence. Under the Minnesota statutory scheme used to impose Carrillo's sentence, sentences presumptively consist of a specified minimum term of imprisonment equal to two-thirds of the executed sentence and a specified maximum term of supervised release equal to one-third of the executed sentence. *See* Minn.Stat. § 244.101, subd. 1. Under this scheme, an inmate's term of imprisonment may be extended by the commissioner only if the inmate commits a disciplinary offense. *See* Minn.Stat. §§ 244.101, subd. 2; 244.05, subd. 1(b). In fact, our courts are required to explain the following at sentencing: (1) the total length of the executed sentence; (2) the amount of time the defendant will serve in prison; and (3) the amount of time the defendant will serve on supervised release, *assuming the defendant commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period.*

Minn.Stat. § 244.101, subd. 2 (emphasis added). The statute provides further guidance, stating: "[t]he court shall also explain that the amount of time



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the defendant actually serves in prison may be extended by the commissioner if the defendant commits any disciplinary offenses in prison." *Id.*

[8] Here, the commissioner found that Carrillo committed a disciplinary offense and extended his incarceration time by seven days. In examining the nature and extent of Carrillo's deprivation, it becomes apparent that it is dissimilar to that in *Sandin*. The deprivation in *Sandin* involved the punishment of disciplinary segregation, and thus involved only the conditions under which the inmate served his time while in prison. 515 U.S. at 475-76, 115 S.Ct. 2293.<sup>FN4</sup> In *Sandin*, the Supreme Court concluded that the disciplinary segregation was not a departure from the basic conditions of the inmate's sentence, \*772 and that the punishment did not "inevitably affect" the duration of his sentence. *Id.* at 487, 115 S.Ct. 2293.

FN4. Carrillo's deprivation is similar to the deprivation in *Sandin* with respect to the 23 days that Carrillo spent in disciplinary segregation, but different from the deprivation in *Sandin* in that Carrillo's date of release from prison was extended by seven days.

It appears to us that Carrillo's deprivation is more similar to the deprivation experienced by the inmate in *Wolff*, where the Supreme Court held that the inmate had a liberty interest in the date of his release from prison. Thus, a further comparison between this case and *Wolff* is in order. Under the Nebraska statute examined in *Wolff*, inmates would accrue good time credits at a rate of two months for the first and second years of good behavior, three months for the third year, and four months for every year thereafter. *See Wolff*, 418 U.S. at 546 n. 6, 94 S.Ct. 2963 (citing Neb.Rev.Stat. § 83-1107 (Cum.Supp.1972)). The forfeiture or withholding of those good time credits affects the length of the term of imprisonment. *Wolff*, 418 U.S. at 547, 94 S.Ct. 2963.<sup>FN5</sup> When it examined Nebraska's sentencing scheme, the Court determined that the system of good time credits created a liberty interest strong enough to require due process protection. *Id.* at 558, 94 S.Ct. 2963.

FN5. We note that in Minnesota, an inmate sentenced for crimes committed before 1993 shall have his sentence "reduced in duration by one day for each two days during which the inmate violates none of the disciplinary offense rules promulgated by the commissioner." Minn.Stat. § 244.04, subd. 1 (2004). Such a reduction in sentence length is analogous to the reduction due to "good time credits" in *Wolff*. Carrillo was convicted in 1999, and therefore this statute is not applicable to him. But we cite the statute for purposes of comparison with the current Minnesota sentencing scheme and the sentencing scheme the Supreme Court considered in *Wolff*. *See* Footnote 7.

[9] The Nebraska sentencing scheme which the Supreme Court held to create a liberty interest contains a subtle but significant liberty interest difference from that in Minnesota's sentencing scheme—a difference which arguably may create an even greater liberty interest for Carrillo. Under the sentencing scheme at issue in *Wolff*, good time credits *only accrued if an inmate did not commit a disciplinary offense*. *See* Neb.Rev.Stat. § 83-1107. By contrast, under Minnesota's current sentencing scheme, there is a presumption from the moment that a court imposes and explains the sentence that the inmate will be released from prison on a certain date—and that presumption is overcome only if the inmate commits a disciplinary offense. While the distinction is subtle, we conclude that due to the presumptions that underlie Minnesota's sentencing scheme, Carrillo has an even stronger liberty interest at stake than did the inmate in *Wolff*, and accordingly any extension of his incarceration implicates due process protection.<sup>FN6</sup>

FN6. Contrary to the dissent's assertion, the majority does not "bifurcate the analysis" by treating the statute and the nature of the deprivation separately. Our analysis is informed by our observation that the statutory scheme *establishes the basis for evaluating* the nature of the deprivation, and thus we consider both



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together. Punishment schemes are imposed by statute; thus, the deprivation caused when an inmate's supervised release date is extended does not and cannot occur in a vacuum. If an inmate's established date of supervised release were arbitrary and could be modified by the commissioner for any reason or for no reason at all, or if the legislature did not clearly delineate the 2/3 imprisonment and 1/3 supervised release scheme in the statute, then the extension of that inmate's likely date of supervised release may not represent a departure from the basic conditions of his sentence. But it is precisely because Minnesota's statutory scheme sets up an ordered, standardized, clearly delineated system-under which an inmate *will be released* from prison on the date that he was informed by the judge at sentencing that he would be released *unless he commits a disciplinary offense*-that the extension of Carrillo's supervised release date represents a departure from the basic conditions of his sentence. Moreover, it follows that Carrillo's deprivation under the current-post-1993-Minnesota statutory scheme is more severe than is an inmate's deprivation under the statutory scheme in *Wolff* because Carrillo was given a more concrete expectation of release than was the inmate in *Wolff*.

\*773 [10] We recognize that Minnesota's sentencing scheme contains a short provision entitled "No right to supervised release" that declares that "[n]otwithstanding the court's explanation of the potential length of a defendant's supervised release term, the court's explanation creates no right of a defendant to any specific, minimum length of a supervised release term." Minn.Stat. § 244.101, subd. 3. But the statutes, taken as a whole, plainly establish a sentencing scheme under which an inmate *will serve* two-thirds of his executed sentence in prison and one-third on supervised release *unless* he commits a disciplinary offense while in prison. Therefore, we are left with two possible ways to interpret section 244.101,

subd. 3. Either there is a difference between a "liberty interest" and a "right" which makes it possible to reconcile that provision with the rest of the sentencing scheme, or "liberty interest" and "right" are interchangeable and the legislature has established a sentencing scheme that is internally inconsistent. Our interpretation both gives the legislature the benefit of the doubt and harmonizes section 244.101, subd. 3, with the rest of the statutory scheme.<sup>FN7</sup>

FN7. The dissent asserts that the majority ignores the statutory construction canon directing the court to construe every statute to give effect to all of its provisions; yet it is the dissent's analysis that appears to offend that canon. See Minn.Stat. § 645.16 (2004). By making section 244.101, subd. 3, the decisive provision, the dissent leaves nothing to prevent the commissioner from extending an inmate's date of supervised release for any reason or for no reason whatsoever. Such a result renders meaningless other statutory provisions that make it clear that the commissioner may extend an inmate's date of supervised release only if the inmate has committed a disciplinary offense. See Minn.Stat. §§ 244.101, subd. 2; 244.05, subd. 1(b) (2004).

[11] For all of the foregoing reasons, we conclude that, similar to the inmate in *Wolff* and unlike the inmate in *Sandin*, Carrillo has experienced a deprivation that "inevitably affects" the length of his term of imprisonment because his date of release from prison was extended by seven days as an *immediate consequence* of the disciplinary action against him. In reaching our conclusion, we recognize that seven days of additional incarceration time may not appear long relative to two-thirds of a 114-month sentence, but it is important to emphasize that we conclude any extension of an inmate's period of imprisonment represents a significant departure from the basic conditions of the inmate's sentence. Cf. *Foucha v. Louisiana*, 504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992). Therefore, we hold that under

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the Due Process Clause of the United States Constitution, Carrillo has a protected liberty interest in his supervised release date that triggers a right to procedural due process before that date can be extended. Because we have reached this holding under the U.S. Constitution, we conclude that it is unnecessary to analyze Carrillo's liberty interest under the Minnesota Constitution, and therefore we decline to do so.

## II.

[12] Having concluded that Carrillo has a protected liberty interest in his supervised release date under the United States Constitution, we turn now to the issue of whether the DOC's "some evidence" standard of proof offers sufficient protection of that interest. The purpose of a standard of proof for a particular type of adjudication is to instruct the fact finder \*774 on the degree of confidence our society desires the fact finder to have in the correctness of his or her conclusions. *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979). The standard of proof "serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision." *Id.*

[13] The evolution of our law has produced three basic standards of proof: preponderance of the evidence, clear and convincing, and beyond a reasonable doubt. *Id.* at 423-24, 99 S.Ct. 1804. The Supreme Court stated that civil cases typically use the preponderance of the evidence standard because society has a "minimal concern" with the outcome of private suits. *Id.* at 423, 99 S.Ct. 1804. Criminal cases employ the beyond a reasonable doubt standard because the defendant's interests are so strong that the likelihood of erroneous judgment must be minimized as much as possible. *Id.* at 423-24, 99 S.Ct. 1804. Civil cases involving allegations of fraud or other quasi-criminal wrongdoing may use the intermediate clear and convincing evidence standard because the defendant's interests at stake in those cases are more substantial than those present in a typical civil case. *Id.* at 424, 99 S.Ct. 1804.

[14][15] The DOC policy specifies that a fourth standard of proof—"some evidence"—shall be used in hearings on major violations of prison disciplinary rules. This standard allows a hearing officer to find that an inmate violated a disciplinary rule if there is some credible evidence presented to show that the inmate committed the offense charged. Thus, as a standard of proof, "some evidence" is much less exacting than the preponderance of the evidence standard used in civil cases.

The Supreme Court addressed the "some evidence" standard with respect to prison disciplinary hearings in *Superintendent, Massachusetts Correctional Institution at Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985). In *Hill*, the Court held that the requirements of due process are satisfied if some evidence supports a decision by a prison disciplinary board to revoke good time credits. *Id.* at 455, 105 S.Ct. 2768. The Court explained that "[t]his standard is met if 'there was some evidence from which the conclusion of the administrative tribunal could be deduced.'" *Id.* (citing *United States ex rel. Vajtauer v. Comm. of Immigration*, 273 U.S. 103, 106, 47 S.Ct. 302, 71 L.Ed. 560 (1927)). Additionally, the Court stated: Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is *any* evidence in the record that could support the conclusion reached by the disciplinary board.

*Hill*, 472 U.S. at 455-56, 105 S.Ct. 2768 (emphasis added).

Since the release of *Hill*, courts have interpreted its holding regarding the use of the "some evidence" standard differently. Some courts, such as the Eighth Circuit, have concluded that due process is satisfied if the fact finder, generally a prison disciplinary committee, bases its decision on the existence of "some evidence" in the record that shows that the inmate committed the offense charged. See, e.g., *Goff v. Dailey*, 991 F.2d 1437, 1442 (8th Cir.1993). The Eighth Circuit reasoned that prison administration would be unduly burdened and institutional interests possibly

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threatened if a more exacting evidentiary standard were required. *Id.* Additionally, the court noted that not all deprivations of interests protected by the Fourteenth Amendment require a full evidentiary hearing before an impartial decision-maker\*775 using a preponderance of the evidence or higher standard. *Id.* at 1440-41, citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985) (concluding that an employer may terminate a tenured public employee for cause after giving the employee notice of the charges, an explanation of the evidence, and an opportunity for the employee to present his side of the story); *Goss v. Lopez*, 419 U.S. 565, 582, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975) (concluding that a school principal may deprive a student of a protected interest after informing the student of the accusations against him and "informally discuss[ing] the alleged misconduct with the student minutes after it has occurred"). The Eighth Circuit then concluded that prison inmates are not entitled to the level playing field created by a fully adversarial proceeding using a preponderance of the evidence standard, and that the "some evidence" standard is appropriate for use at the fact-finding level. *Id.* at 1441.

Though the Eighth Circuit and some other courts have concluded that the "some evidence" standard is appropriate at the fact-finding level, the prevailing view is that the standard is only suitable for use by an appellate court in the context of reviewing lower court decisions. Courts espousing this view interpret *Hill* as addressing the "some evidence" standard solely in the context of judicial review of prison administration decisions. See *Brown v. Fauver*, 819 F.2d 395, 399 n. 4 (3rd Cir.1987); *Kodama v. Johnson*, 786 P.2d 417, 420 (Colo.1990); *Harper v. State*, 397 N.W.2d 740, 743 (Iowa 1986). The Vermont Supreme Court carefully analyzed *Hill*, and concluded that *Hill* addressed the appropriate standard for judicial review of the actions of prison authorities rather than the proof necessary for a fact finder to conclude that an inmate violated a disciplinary rule. *LaFaso v. Parrissi*, 161 Vt. 46, 633 A.2d 695, 697-98 (1993). The Vermont court went on to state that "[t]he safest reading of the Supreme Court's ambiguous analysis is that *Hill* does not

purport to resolve the question one way or the other." *Id.* at 698. The court then engaged in its own analysis on the due process issue. *Id.* Indeed, citing *Hill*, the Supreme Court recently explained in a plurality opinion that it has utilized the "some evidence" standard not as a standard of proof, but rather as a standard of review when examining an administrative record developed after an adversarial proceeding. *Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S.Ct. 2633, 2651, 159 L.Ed.2d 578 (2004).<sup>FN8</sup>

FN8. The Supreme Court used the following language in explaining the "some evidence" holding of *Hill*:

Because we conclude that due process demands some system for a citizen detainee to refute his classification, the proposed "some evidence" standard is inadequate. Any process in which the Executive's factual assertions go wholly unchallenged or are simply presumed correct without any opportunity for the alleged combatant to demonstrate otherwise falls constitutionally short. As the Government itself has recognized, we have utilized the "some evidence" standard in the past as a standard of review, not as a standard of proof. \* \* \* That is, it primarily has been employed by courts in examining an administrative record developed after an adversarial proceeding—one with process at least of the sort that we today hold is constitutionally mandated in the citizen enemy-combatant setting. See [*Hill*]. This standard therefore is ill suited to the situation in which a habeas petitioner has received no prior proceedings before any tribunal and had no prior opportunity to rebut the Executive's factual assertions before a neutral decisionmaker. *Hamdi*, 124 S.Ct. at 2651.

[16] We agree with the prevailing view and conclude that *Hill* addressed only the \*776 appropriateness of "some evidence" as a standard of appellate review, not a standard of proof. Therefore, we now seek to determine through our

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own analysis the appropriate fact-finding standard to be used by the DOC. To determine whether a standard of proof in a particular type of proceeding satisfies due process, the Supreme Court has prescribed a three-factor test that examines: (1) the private interest affected, (2) the risk of an erroneous deprivation of such interest, and (3) the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

[17] It is clear that the first factor is satisfied here, as we have already concluded that an inmate has a protected liberty interest in his date of supervised release. The Supreme Court has acknowledged that when an inmate has a liberty interest in good time credits, he also has a strong interest in assuring that the loss of his good time credits is not imposed arbitrarily because such a loss threatens his prospective freedom from confinement by extending the length of imprisonment. See *Hill*, 472 U.S. at 453, 105 S.Ct. 2768. Here, as a direct result of the DOC hearing officer's determination that Carrillo had engaged in disorderly conduct, Carrillo had seven days added to his term of incarceration.

[18] Under the second factor, the risk of erroneous deprivation of an interest is high when the fact finder uses the "some evidence" standard. The Vermont Supreme Court in *LaFaso* noted: "It is difficult to conceive of an aspect of disciplinary procedure with a greater impact on the accuracy of fact-finding than the evidentiary standard on which the ultimate conclusion must be based." 633 A.2d at 699. We agree. Under the "some evidence" standard, a fact finder could conclude that an inmate has committed a disciplinary offense even when the greater weight of the evidence indicates that he did not. Indeed, the fact finder could reach this conclusion even when significantly more than the greater weight of the evidence indicates that the inmate is not guilty. Thus, the use of the "some evidence" standard might result in the extension of many inmates' terms of incarceration, even when there is a strong likelihood that these inmates have not committed a disciplinary offense. Under this standard of proof, the benefits of certain procedural safeguards provided by the DOC's rules, such as notice and opportunity to respond, are of no value

when prison authorities can extend an inmate's term of incarceration for an alleged violation of a disciplinary rule even when the balance of the evidence fails to prove that the inmate committed the charged offense.

[19][20] We turn now to the third and final factor, the government's interest. The Eighth Circuit in *Goff* noted that the government has an interest in assuring the safety of inmates and employees, as well as avoiding burdensome administrative requirements that might be susceptible to manipulation. *Goff*, 991 F.2d at 1441. But the government also has an interest in promoting fair procedures, and the government derives no benefit from disciplining inmates who have committed no offense. The institution's goals of preparing and rehabilitating inmates for re-entry into society are better achieved if they have been treated fairly. Cf. *McKune v. Lile*, 536 U.S. 24, 36, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002) (stating that rehabilitation is an important penological objective, and a prison program bearing a rational relation to that objective does not violate the privilege against self-incrimination as long as the adverse consequences an inmate faces for not participating are related to the program objectives and do not constitute "atypical and significant hardships in relation to the ordinary incidents of prison life"). The "some evidence" standard sends the message to prison inmates as well as society at large that once an individual is convicted of a crime, he is presumed guilty of every subsequent allegation. This message runs contrary to fundamental principles of criminal law in the United States.

[21][22][23] Taking the Supreme Court's three factors into consideration, we conclude that the "some evidence" standard is inappropriate for use by the DOC at the fact-finding level. We conclude that the preponderance of the evidence standard better protects against an erroneous deprivation of an inmate's liberty interest in his supervised release date and does not impose an unacceptable burden on the DOC. Therefore, we conclude that a DOC hearing officer must find by a preponderance of the evidence that Carrillo has committed a disciplinary offense before the commissioner can extend the date of his supervised release.



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Accordingly, we hold that the district court and the court of appeals erred when they denied Carrillo's petition for a writ of habeas corpus.

Reversed.

ANDERSON, G. Barry, J., took no part in the consideration or decision of this case. PAGE, Justice (concurring).

I agree with the majority's holding that a Minnesota prison inmate has a constitutionally protected interest in a specific supervised release date. But I write separately to comment on the dissent's conclusion that an inmate has no such right under Minnesota's statutes. In my view, the dissent's analysis is flawed.

The object of statutory construction is "to ascertain and effectuate the intention of the legislature." Minn.Stat. § 645.16 (2004). As such, we must construe statutes as a whole, and give meanings to words and sentences in light of their context. *Christensen v. Hennepin Transp. Co., Inc.*, 215 Minn. 394, 409, 10 N.W.2d 406, 415 (1943). When the words of a statute are clear and free from all ambiguity, further construction is neither necessary nor permitted. *Owens ex rel. Owens v. Water Gremlin Co.*, 605 N.W.2d 733, 736 (Minn.2000). A statute's words and phrases are to be "construed according to rules of grammar and according to their common and approved usage." Minn.Stat. § 645.08(1) (2004).

Under Minn.Stat. § 244.101, subd. 1 (2004), an inmate must serve "a specified minimum term of imprisonment that is equal to two-thirds of the executed sentence," and a specified maximum supervised release term "subject to the provisions of section 244.05, subdivision 1b." Under Minn.Stat. § 244.05, subd. 1b (2004), for felony offenses committed on or after August 1, 1993, every inmate sentenced to prison "shall serve a supervised release term upon completion of the inmate's term of imprisonment and any disciplinary confinement period imposed by the commissioner" due to violation of disciplinary rules or failure to participate in a required rehabilitation program. (Emphasis added.) Read together, the language of section 244.101, subdivision 1, and section 244.05,

subdivision 1b, is clear and free from ambiguity.

An inmate, such as Carrillo, who is sentenced for a felony offense that occurred on or after August 1, 1993, has a right to be placed on supervised release after serving two-thirds of the executed sentence plus any disciplinary confinement period properly imposed by the Commissioner of Corrections. Although the inmate has no right to be placed on supervised release on a date certain, he or she does have a liberty interest in being released pursuant to the terms of the statutory scheme. As the inmate is entitled to supervised release after serving two-thirds of the executed sentence plus any properly imposed disciplinary confinement period, so too is the Commissioner of Corrections obligated to place the inmate on supervised release after that time period. Any failure to do so would be a due process violation because the language of the statute creates a mandatory supervised release requirement. See *State v. Calmes*, 632 N.W.2d 641, 645, 648 (Minn.2001) ("[D]ue process may be violated when a defendant's sentence is enhanced after the defendant has developed a crystallized expectation of finality in the earlier sentence."); *State v. Humes*, 581 N.W.2d 317, 319 (Minn.1998) (concluding that the use of the word "shall" in the conditional release term statute made the conditional release term mandatory).

The dissent reads section 244.101, subdivision 1, and section 244.05, subdivision 1b, in conjunction with section 244.101, subdivision 2 (2004), to conclude, "[t]hese provisions clearly demonstrate that there is no statutory right to a specified period of supervised release." That conclusion is wrong. Minnesota Statutes § 244.101, subdivision 2, provides:

When a court pronounces an executed sentence under this section, it shall explain: (1) the total length of the executed sentence; (2) the amount of time the defendant will serve in prison; and (3) the amount of time the defendant will serve on supervised release, assuming the defendant commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period. The court shall also explain that the amount of time the defendant actually serves in prison may be extended by the commissioner if the defendant commits any disciplinary offenses in prison and that



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this extension could result in the defendant's serving the entire executed sentence in prison.

(Emphasis added.) Thus, section 244.101, subdivision 2, merely confirms the application of section 244.05, subdivision 1b, and requires the sentencing court to explain to the defendant the requirements of section 244.05, subdivision 1b. In support of its conclusion, the dissent cites to section 244.101, subdivision 3 (2004), which provides that "[n]otwithstanding the court's explanation of the potential length of the defendant's supervised release term, the court's explanation creates no right of a defendant to any specific, minimum length of a supervised term." (Emphasis added.) Construing subdivision 3 in the context of section 244.101, it is clear that subdivision 3 only provides that the court's explanation does not create a right to a specific minimum length of a supervised release term. Subdivision 3 places no limits on the requirements of section 244.05, subdivision 1b. Section 244.101, subdivision 3, likely reflects the legislature's concern that any error in a sentencing court's explanation should not lead a defendant to claim a right to a particular supervised release term. An example, by way of analogy, illustrates this point. We have held that when a defendant is convicted of a crime that carries with it a conditional release term and the sentencing court fails to impose the conditional release term at the sentencing hearing, the conditional release is nonetheless mandatory and nonwaivable.<sup>FN1</sup> See *Calmes*, 632 N.W.2d at 649. \*779 Section 244.101, subdivision 3, like our holding in *Calmes*, makes it clear that an error by the sentencing court in explaining the minimum period of incarceration and the maximum period of supervised release creates no right in the defendant to any specific minimum length of supervised release.

FN1. We have recognized that the defendant has the right to the benefit of the bargain of his or her plea agreement. See, e.g., *State v. Wukawitz*, 662 N.W.2d 517, 520, 522 (Minn.2003) (holding that where imposition of mandatory conditional release term would violate a plea agreement and a plea withdrawal would

unduly prejudice the state, the district court has discretion to impose a conditional release term shorter than the statutory minimum); *State v. Jumping Eagle*, 620 N.W.2d 42, 45 (Minn.2000). This is so because "if a guilty plea is induced by a government promise, such a promise must be fulfilled or due process is violated." *Wukawitz*, 662 N.W.2d at 522. As a result, under certain circumstances, the terms of the mandatory and nonwaivable conditional release may not be imposed. The defendant's right to the benefit of the plea bargain derives from the defendant's right to due process, and not from some right created by the court's explanation of the potential length of the defendant's sentence.

Because section 244.05, subdivision 1b, creates a liberty interest in being released after an inmate has served the term of imprisonment plus any disciplinary confinement period properly imposed by the commissioner, Carrillo is entitled to review of the propriety of the imposed discipline.

BLATZ, Chief Justice (dissenting).

"[T]he interest of prisoners in disciplinary procedures is not included in that 'liberty' protected by the Fourteenth Amendment." *Wolff v. McDonnell*, 418 U.S. 539, 556-57, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Only a statute can create a liberty interest in a specified date of supervised release, which gives rise to due process procedural protections before that date can be extended for violating a disciplinary rule. See *Sandin v. Conner*, 515 U.S. 472, 483-84, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995); *Wolff*, 418 U.S. at 557, 94 S.Ct. 2963. Because I believe Minnesota's statutes do not create a liberty interest in a specified date of supervised release, I respectfully dissent.

Critical to the analysis of the question before this court are the United States Supreme Court decisions in *Wolff*, 418 U.S. at 539, 94 S.Ct. 2963, and *Sandin*, 515 U.S. at 472, 115 S.Ct. 2293. In *Wolff*, the Supreme Court addressed whether Nebraska's prison disciplinary procedures complied with due process. 418 U.S. at 555, 94 S.Ct. 2963. The

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Court concluded that, while the federal constitution does not guarantee an inmate good-time credit for satisfactory behavior in prison, a state can provide a statutory right to good-time credit, giving rise to a protectible liberty interest. *Id.* at 556-57, 94 S.Ct. 2963.

In determining whether Nebraska's statutes had in fact created a liberty interest, the Supreme Court looked at relevant provisions of the Nebraska statute, which expressly provided for good time stating that:

The chief executive officer of a [correctional] facility *shall* reduce, for parole purposes, for good behavior and faithful performance of duties while confined in a facility the term of a committed offender.

*Id.* at 546 n. 6, 94 S.Ct. 2963 (quoting Neb.Rev.Stat. § 83-1,107 (Cum.Supp.1972)) (emphasis added). The "good-time" reduction by statute could only be forfeited if a disciplinary committee found that the inmate had been engaged in "flagrant or serious misconduct." *Id.* at 545 n. 5, 94 S.Ct. 2963 (quoting Neb.Rev.Stat. § 83-185 (Cum.Supp.1972)).

After reviewing these provisions of the Nebraska statute, the Court stated:

It is true that the Constitution itself does not guarantee good-time credit for satisfactory behavior while in prison. But here the State itself has not only provided a statutory right to good time \*780 but also specifies that it is to be forfeited only for serious misbehavior. Nebraska may have the authority to create, or not, a right to a shortened prison sentence through the accumulation of credits for good behavior, and it is true that the Due Process Clause does not require a hearing "in every conceivable case of government impairment of private interest." But the State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment "liberty" to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not

arbitrarily abrogated.

*Id.* at 557, 94 S.Ct. 2963 (citation omitted). Thus, in holding that the prisoner was entitled to "the minimum requirements of procedural due process appropriate for the circumstances," the Court focused on the fact that the Nebraska statute created a statutory right to good time and the statute specified that good time could be forfeited only for "serious misconduct." *Id.* at 558, 94 S.Ct. 2963.

In *Sandin v. Conner*, the Supreme Court again addressed whether prison disciplinary procedures implicated a liberty interest, requiring procedural protections under the Due Process Clause. 515 U.S. at 487, 115 S.Ct. 2293. The prisoner in *Sandin*, Demont Connor, challenged the imposition of disciplinary segregation for misconduct. The prison regulation in question required a finding of guilt when the allegation of misconduct was "supported by substantial evidence." *Id.* at 475-77, 115 S.Ct. 2293. Although Connor was not allowed to present witnesses at the disciplinary hearing, a fact-finding committee nonetheless found him guilty of misconduct and put him in disciplinary segregation. *Id.* at 475-76, 115 S.Ct. 2293. Connor brought an action against the prison officials in federal district court alleging a deprivation of procedural due process in connection with the disciplinary hearing. *Id.* at 476, 115 S.Ct. 2293. The federal district court granted the state's motion for summary judgment in favor of the prison officials, but the Ninth Circuit reversed. *Id.* The Ninth Circuit concluded that Connor had a liberty interest in remaining free from disciplinary segregation and therefore held that the inmate was entitled to call witnesses at the disciplinary hearing pursuant to *Wolff*. *Id.* at 476-77, 115 S.Ct. 2293.

In reversing the Ninth Circuit, the Supreme Court noted that the Ninth Circuit's holding that the inmate was entitled to procedural protections set forth in *Wolff* was based on an incorrect "negative inference that the [disciplinary] committee may not impose segregation if it does not find substantial evidence of misconduct." *Id.* at 477, 115 S.Ct. 2293. It was this "negative inference" creation of a liberty interest by the Ninth Circuit that the United States Supreme Court rejected in *Sandin*, stating:

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Infer[ring] from the mandatory directive that a finding of guilt "shall" be imposed under certain conditions the conclusion that the absence of such conditions prevents a finding of guilt \* \* \* may be entirely sensible in the ordinary task of construing a statute defining rights and remedies available to the general public. It is a good deal less sensible in the case of a prison regulation primarily designed to guide correctional officials in the administration of a prison. Not only are such regulations not designed to confer rights on inmates, but the result of the negative implication jurisprudence is not to require the prison officials to follow \*781 the negative implication drawn from the regulation, but is instead to attach procedural protections that may be of quite a different nature.

*Id.* at 481-82, 115 S.Ct. 2293. Again recognizing that states can create liberty interests protected by the Due Process Clause, the Court concluded that "Connor's discipline in segregated confinement did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest." *Id.* at 486, 115 S.Ct. 2293. Thus, the Court held that "neither the Hawaii prison regulation in question, nor the Due Process Clause itself, afforded [the defendant] a protected liberty interest that would entitle him to the procedural protections set forth in *Wolff*." *Id.* at 487, 115 S.Ct. 2293.

While the United States Supreme Court has clearly ruled that state statutes are the source of any due process right to be accorded to inmates in prison disciplinary procedures, the majority nonetheless states that "it is inappropriate to analyze Carrillo's liberty interest by looking solely to statutory language; rather, we must examine the nature of the deprivation and the extent to which that deprivation departs from the basic conditions of Carrillo's sentence." In so stating, the majority in effect interprets *Wolff* and *Sandin* as creating an analytical framework that has two separate legal considerations: (1) the statutory right and (2) the nature of the deprivation. Using this framework, the majority then concludes that Carrillo has a liberty interest in a specific supervised release date. This framework, I respectfully submit, is not grounded in or supported by Supreme Court

precedent because the Court's precedent does not bifurcate the analysis, but rather looks to the statute to see if there has been a deprivation. Accordingly, because a liberty interest, if created, is created by state statute, I begin by analyzing the applicable Minnesota statutes to determine whether they provide a protectible entitlement to a specified date of supervised release.

Under Minnesota statutes, an executed sentence "consists of two parts: (1) a specified minimum term of imprisonment that is equal to two-thirds of the executed sentence; and (2) a specified maximum supervised release term that is equal to one-third of the executed sentence." Minn.Stat. § 244.101, subd. 1 (2004). Importantly, the statutes provide that "[t]he amount of time the inmate actually serves in prison and on supervised release is subject to the provisions of [Minn.Stat.] § 244.05, subd. 1b." Minn.Stat. § 244.101, subd. 1. Section 244.05 provides that an inmate convicted for a crime committed after August 1, 1993, "shall serve a supervised release term upon completion of the inmate's term of imprisonment and any disciplinary confinement period imposed by the commissioner due to the inmate's violation of any disciplinary rule adopted by the commissioner." Minn.Stat. § 244.05, subd. 1b (2004) (emphasis added). Minnesota statutes further require that the district court explain the two parts of the sentence—the minimum term of imprisonment and the maximum term of supervised release—to the defendant when the sentence is pronounced. Minn.Stat. § 244.101, subd. 2 (2004). As set forth in the statute, at sentencing the court must specifically "explain that the amount of time the defendant actually serves in prison may be extended by the commissioner if the defendant commits any disciplinary offenses in prison." *Id.* These provisions clearly demonstrate that there is no statutory right to a specified period of supervised release.

Reinforcing this clear expression of legislative intent is the statutory provision entitled "No right to supervised release" which provides: "Notwithstanding the court's explanation of the potential length \*782 of a defendant's supervised release term, the court's explanation creates no right of a defendant to any specific, minimum length of a

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supervised release term." Minn.Stat. § 244.101, subd. 3 (2004). In my view, this statement and the totality of the other relevant statutory provisions is determinative of the issue before us; the legislature clearly did not intend to create a liberty interest in a specified date of supervised release.

The majority's reliance on *Sandin* to look at the "deprivation" <sup>FN1</sup> suffered by the defendant, notwithstanding the plain language of our statute stating there is "no right," ignores the holding of *Wolff*—that there is no right to supervised release unless it is created by the state. Thus, the majority's analysis is in direct conflict with *Wolff* and, in consequence, with the Supreme Court's statement in *Sandin* that "the time has come to return to the due process principles we believe were correctly established and applied in *Wolff* and *Meachum*." *Sandin*, 515 U.S. at 483, 115 S.Ct. 2293. Moreover, by ignoring the express language that there is "no right," the majority violates the canon of construction that we construe every law to give effect to *all* its provisions. Minn.Stat. § 645.16 (2004) (emphasis added). <sup>FN2</sup>

FN1. The majority states: "It appears to us that Carrillo's deprivation is more similar to the deprivation experienced by the inmate in *Wolff*, where the Supreme Court held that the inmate had a liberty interest in the date of his release from prison." While his deprivation may be similar, the statutes are not. Unlike Minnesota Statutes, Nebraska's statute did not contain a provision stating that the prisoner had "no right" to supervised release, but in fact expressly provided that the chief executive officer of a prison "shall reduce" an inmates sentence for good behavior. *Wolff*, 418 U.S. at 546 n. 6, 94 S.Ct. 2963.

FN2. The majority suggests that the statute is "internally inconsistent" if not interpreted to provide a liberty interest to Carrillo despite the provision stating that there is "no right." However, the Supreme Court in *Sandin* recognized that while there may be prison regulations "

designed to guide correctional officials in the administration of a prison," "such regulations [are] not designed to confer rights on inmates." *Sandin*, 515 U.S. at 481-82, 115 S.Ct. 2293. Similarly, our statute is not designed to confer rights on inmates.

In summary, there can be no deprivation if there is no constitutional or statutory right. <sup>FN3</sup> Indeed, there can be no deprivation where our statute specifically provides that a defendant has "no right \* \* \* to any specific, minimum length of a supervised release term." Minn.Stat. § 244.101, subd. 3. With such statutory language, I cannot conclude that an inmate was deprived, much less that, as the majority concludes, the deprivation caused "a significant departure from the basic conditions of the inmate's sentence."

FN3. The majority distinguishes a "liberty interest" from a "right" in order to circumvent the legislature's express language that there is "no right." In doing so, the majority concludes that while there is no "right" to supervised release, an inmate has a "liberty interest" in a specific period of supervised release. This is inconsistent with the Supreme Court's decision in *Wolff* where the Court concluded that the inmate had an interest of "real substance" *because* the state "created the right to good time." *Wolff*, 418 U.S. at 557, 94 S.Ct. 2963.

While it may be preferable policy or practice to have such a statutory right, it is not the responsibility of this court to create one. It is our responsibility to afford inmates the process necessary to protect any right created by statute. Here, no right is created and I would so hold.

ANDERSON, Russell A., J. (dissenting).

I join the dissent of Chief Justice Blatz.

Minn., 2005.

Carrillo v. Fabian

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PROOF OF SERVICE BY MAIL

CASE NAME: MONTEZ v. CURRY, on habeas corpus

CASE NO. : To be assigned

I, Victor M. Montez, hereby declare that I am a party to the above titled action and am over the age of eighteen (18), and I did serve a true copy of the following:

WRIT OF HABEAS CORPUS WITH EXHIBITS

by placing a true copy in an envelope with first class postage fully prepaid and said envelope surrendered to correctional staff at the Correctional Training Facility for delivery to the prison mail room and therefrom delivered to the local United States Post Office the next business day from which there is postal service between the place of mailing and the addressee:

Bill Lockyer  
Attorney General  
110 W. "A" Street, #100,  
San Diego, CA 92101

I declare under penalty of perjury that the foregoing is true and correct, doing so this 24 day of October, 2006, at Soledad, California.

Victor M. Montez



**EXHIBIT 2**

**FILED**  
LOS ANGELES SUPERIOR COURT

AUG 15 2007

JOHN A. CLARKE, CLERK  
BY Joseph H. Paredes DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

In re,

VICTOR MONTEZ,

Petitioner,

On Habeas Corpus

) Case No.: BH004498

) ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered petitioner's Writ of Habeas Corpus filed on January 2, 2007. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the Board's finding that petitioner is unsuitable for parole (See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4<sup>th</sup> 616, 667 (hereafter *Rosenkrantz*)).

Petitioner was received in the Department of Corrections on June 1, 1982 after a conviction for second-degree murder with use of a firearm. He was sentenced to seventeen years to life. His minimum parole eligibility date was April 9, 1990. The record reflects that on August 9, 1980, petitioner, his wife and a female companion were traveling to Oxnard when their car broke down on the Ventura Freeway. The two women stood on the side of the freeway waiting for someone to stop to offer help, while petitioner hid in the bushes. The victim stopped for the two stranded women. As they entered the vehicle, petitioner ran up brandishing a gun.

1 He ordered the driver to take them to Oxnard. He then fired the weapon killing the victim. He  
2 dragged the body out of the car and hid it under a tree and shrubs. Then, petitioner and his crime  
3 partners drove off in the victim's car. Petitioner contends that he fired the gun accidentally when  
4 the victim attempted to adjust the seat.

5 The Board found petitioner unsuitable for parole after a parole consideration hearing held  
6 on May 31, 2006. Petitioner was denied parole for one year. The Board concluded that petitioner  
7 was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat  
8 to public safety. The Board based its decision on several factors, including his commitment  
9 offense.

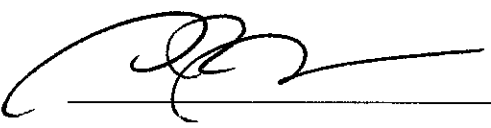
10 The Court finds that there is some evidence to support the Board's finding that "the  
11 motive for the crime is inexplicable or very trivial in relation to the offense" (Cal. Code Regs.,  
12 tit. 15, §2402, subd. (c)(1)(E).) "To fit the regulatory description, the motive must be materially  
13 less significant (or more "trivial") than those which conventionally drive people to commit the  
14 offense in question, and therefore more indicative of a risk of danger to society if the prisoner is  
15 released than is ordinarily present." (*In re Scott* (2004) 119 Cal.App.4<sup>th</sup> 871, at 893.) In this  
16 case, petitioner and his crime partners killed the victim because they needed a ride to Oxnard.  
17 The Board was justified in concluding that this motive is materially less significant motives than  
18 those motives which conventionally drive people to commit murder, thus indicating that  
19 petitioner poses a greater risk of danger to society if released than is ordinarily present.

20 Additionally, the record reflects that petitioner had an unstable social history prior to the  
21 commitment offense, which is a factor tending to indicate unsuitability for parole. (Cal. Code  
22 Regs., tit. 15, §2402, subd. (c)(3).) Petitioner began using herion when he was thirteen years old.  
23 He eventually developed a \$200 a day habit. He was first arrested at the age of thirteen and had  
24 several more arrests as an adult, leading to sentences of probation and state prison in New  
25 Mexico. He dropped out of high school when he was sixteen years old. Heavy drug use, school  
26 problems and prior criminality are some evidence of an unstable social history. (*In re Van*  
27 *Houten* (2004) 116 Cal.App.4<sup>th</sup> 339, 353.)  
28

1 The Court rejects petitioner's argument that he is entitled to release based on the terms of  
2 his plea agreement. A plea bargain violation claim depends upon the actual terms of the  
3 agreement, not the subjective understanding of the defendant or deficient advice provided by his  
4 attorney. (*In re Honesto* (2005) 130 Cal.App.4<sup>th</sup> 81, 91-93.) According to the terms of his plea  
5 bargain, petitioner pled guilty to second degree murder with use of a firearm and agreed to a  
6 sentence that carried a maximum term of life in prison. Petitioner has "no vested right to  
7 determination of his sentence at less than the maximum." (*In re Schoengarth* (1967) 66 Cal.2d  
8 295, 302.) Therefore, the Board did not violate the plea bargain in finding petitioner unsuitable  
9 for parole.

10 Accordingly, the petition is denied.

11  
12  
13 Dated: 8/15/07

  
STEVEN VAN SICKLEN  
Judge of the Superior Court

14  
15 Clerk to give notice.



**Send copy of order to:**

Department of Justice – State of California  
Office of the Attorney General  
Gregory J. Marcot, Deputy Attorney General  
110 West A Street, Suite 1100  
San Diego, CA 92101

Victor M. Montez  
Correctional Training Facility  
P.O. Box 689 (ED-181L)  
Soledad, CA 93960



<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp <b>FILED</b> LOS ANGELES SUPERIOR COURT AUG 15 2007 JOHN A. CLARKE, CLERK BY <u>Joseph M. Pulido</u> DEPUTY Joseph M. Pulido
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		
PLAINTIFF/PETITIONER:  VICTOR M. MONTEZ		
<b>CLERK'S CERTIFICATE OF MAILING</b> CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		CASE NUMBER:  BH004498

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- |  |  |
|--|--|
| <input type="checkbox"/> Order Extending Time            | <input checked="" type="checkbox"/> Order re: Writ of Habeas Corpus                          |
| <input type="checkbox"/> Order to Show Cause             | <input type="checkbox"/> Order   |
| <input type="checkbox"/> Order for Informal Response     | <input type="checkbox"/> Order re:   |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of Petition for Writ of Habeas Corpus for the Attorney General |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

August 15, 2007  
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Joseph M. Pulido, Clerk  
Joseph M. Pulido

Victor M. Montez  
C-48215  
Correctional Training Facility  
P.O. Box 689  
Soledad, California 93960

Department of Justice- State of California  
Office of the Attorney General  
Gregory J. Marcot, Deputy Attorney General  
110 West A Street, Suite 1100  
San Diego, CA 92101

**EXHIBIT 3**  
**Part 1 of 4**

Name Victor M. Montez  
 Address Correctional Training Facility  
P.O. Box 689 (ED-181L)  
Soledad, CA 93960  
 CDC or ID Number C-48215

**CALIFORNIA COURT OF APPEALS**

**SECOND APPELLATE DISTRICT**

(Court)

**PETITION FOR WRIT OF HABEAS CORPUS**

**VICTOR M. MONTEZ,**

Petitioner

vs.

No. \_\_\_\_\_

(To be supplied by the Clerk of the Court)

**BEN CURRY (Warden),,**

Respondent

(Supp. Ct. Case No. BH004498,  
 Los Angeles County)

**INSTRUCTIONS—READ CAREFULLY**

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court (as amended effective January 1, 2005). Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

## This petition concerns:

- ☐ A conviction
 ☐ Parole  
☒ A sentence
 ☐ Credits  
☐ Jail or prison conditions
 ☐ Prison discipline  
☐ Other (specify): \_\_\_\_\_

1. Your name: Victor M. Montez
2. Where are you incarcerated? Correctional Training Facility, P.O. Box 689, Soledad, CA 93960
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

2nd degree murder w/use of a firearm

- b. Penal or other code sections: 187 / 12022.5
- c. Name and location of sentencing or committing court: Superior Court of California,  
County of Los Angeles
- d. Case number: LA A146105
- e. Date convicted or committed: March 26, 1982
- f. Date sentenced: May 21, 1982
- g. Length of sentence: 15 years to life plus 2 years firearm enhancement
- h. When do you expect to be released? To be determined
- i. Were you represented by counsel in the trial court? ☐ Yes. ☐ No. If yes, state the attorney's name and address:  
N/A

4. What was the LAST plea you entered? (check one)

☐ Not guilty ☒ Guilty ☐ Nolo Contendere ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial  
N/A

## 6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

PLEASE SEE APPENDIX "A" PAGE 5 FOR ANSWERS TO 6. ET SEQ.

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who did exactly what to violate your rights at what time (when) or place (where).* (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

PLEASE SEE APPENDIX "A" STARTING AT PAGE 5 FOR ANSWERS TO 6a

## b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

PLEASE SEE APPENDIX "B" STARTING A PAGE 17 FOR ANSWERS TO 6b



8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"): N/A

b. Result: \_\_\_\_\_ c. Date of decision: \_\_\_\_\_

d. Case number or citation of opinion, if known: \_\_\_\_\_

e. Issues raised: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:  
N/A

9. Did you seek review in the California Supreme Court? ☐ Yes. ☐ No. If yes, give the following information:  
N/A

a. Result: \_\_\_\_\_ b. Date of decision: \_\_\_\_\_

c. Case number or citation of opinion, if known: \_\_\_\_\_

d. Issues raised: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

N/A

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

THERE IS NO ADMINISTRATIVE REVIEW

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies. N/A

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: Los Angeles County Superior Court

(2) Nature of proceeding (for example, "habeas corpus petition"): Habeas Corpus

(3) Issues raised: (a) SAME AS RAISED HEREIN, except for subclaim "A": Superior

(b) Court exceeding its jurisdiction.

(4) Result (Attach order or explain why unavailable): Denied (see EXHIBIT 9)

(5) Date of decision: 8/15/2007

b. (1) Name of court: \_\_\_\_\_

(2) Nature of proceeding: \_\_\_\_\_

(3) Issues raised: (a) \_\_\_\_\_

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

No delay

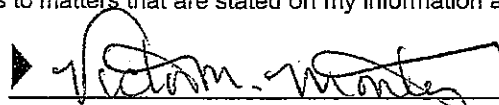
16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 17 Sept. 2007

  
(SIGNATURE OF PETITIONER)

A P P E N D I X "A"

Answer to 6, et seq.

Claim I

IT WAS A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; VIOLATING PETITIONER'S PLEA AGREEMENT, TO FIND HIM UNSUITABLE FOR PAROLE FOR THE EIGHTH TIME AFTER TWENTY-FIVE YEARS BASED ON IMMUTABLE FACTORS WHEN THOSE FACTORS ARE NO LONGER RELIABLE EVIDENCE AND OTHER FINDINGS ARE NOT "CIRCUMSTANCES SPECIFIED BY STATUTE AND BY REGULATION"; THE DECISION BEING ARBITRARY AND AN ABUSE OF DISCRETION.

---

Answers to 6a: Supporting facts

The Plea Agreement

On August 11, 1980, Victor Montez (hereafter Petitioner) was arrested for the murder of Michael Stewart, the murder occurring on August 10, 1980.

In an "information" alleging several charges, all of which but one were dropped (EXHIBIT 1), Petitioner was charged with "murder" in violation of Penal Code § 187.<sup>1/</sup> The charge being for the minimum elements of the offense, that is, Petitioner, "with malice aforethought (did) murder Michael Stewart, a human being."

On March 26, 1982, after being advised of his constitutional rights, primarily, to trial by jury, confront witnesses and cross-examination, and the right to present a defense (EXHIBIT 2, p. 4-5), Petitioner entered into a stipulated plea agreement, a contract, with the state of California to one count of second degree murder, that is, "did unlawfully kill another human being with malice aforethought" with the use of firearm in violation of Penal Code

---

1. All codes and regulations are California, unless otherwise noted.

proffered that the murder of Mr. Stewart "was an unfortunate situation...that Mr. Montez never intended to kill the victim; that this was strictly an accident" (EXHIBIT 2, p. 9). There was no objection by the prosecution.

On March 26, 1982, Petitioner was sentenced to 15 years to life plus two years for the use of a firearm, to be served consecutively (EXHIBIT 3), being credited with 648 days in custody, plus 324 days good time credits, for a total of 972 days preconviction credit (EXHIBIT 4). A probation officer's report (POR) (EXHIBIT 5) was filed in conjunction with sentencing.

#### The Parole Hearing

On May 31, 2006, Victor Montez (hereafter Petitioner) appeared before the Board of Parole Hearings (hereafter Board) for his EIGHTH parole suitability hearing. Petitioner's minimum eligible parole date (MEPD) was fixed at April 9, 1990 (EXHIBIT 6, HT 1:7-16).<sup>2/</sup>

Petitioner was sworn to tell the truth (HT 8:3-7).

#### The commitment offense

The facts of Petitioner's commitment offense were read into the record, being taken from Petitioner's Life Prisoner Evaluation Report (LPER) from June 2002 (EXHIBIT 7), reading from the LPER at HT 8:17-9:26:

On August 9, 1980, Montez and two women, one of whom was his wife, were on their way to Oxnard when their vehicle became disabled. The two women began to hitchhike on the Ventura Freeway while Montez hid in the bushes. It was agreed that the two women would appear as two females stranded on the freeway while Montez would approach the motorist who stopped and exhibit a firearm he carried in his waistband. The victim, Michael Stewart stopped for the women. The women entered the rear seat while beckoning to Montez who was still hiding in the

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2. Reference to parole hearing transcript will be designated by HT followed by page and, when necessary, line number, e.g., (HT 1:1).

bushes. He ran to the car and brandished a small caliber firearm and entered the rear seat of the car. He pointed the firearm at the back of the victim's head and told him to drive them to Oxnard or he would kill him. Montez then fired, striking and killing the victim. Montez exited the car, dragged the body from the car and secreted the body beneath an overhanging tree and shrubs. After leaving the body, Montez, his wife and the other female companion drove the victim's car to Oxnard.

Petitioner "basically concurs with the report" (HT 10:3), with few exceptions; those exceptions being that "he never threatened the victim, in fact he offered the victim money for gas" (HT 10:4-6), Petitioner did have the gun pointed at the victim's head, but "believes the gun fired when the victim adjusted himself in the car seat and his elbow knocked the gun" (HT 10:6-11), Petitioner had no "intention to kill the victim" (HT 10:12-13), and "he never threatened the witness with violence if she contacted the police as is alleged" (HT 10:20-24). The facts of the offense are immutable and have remained consistent since the POR (EXHIBIT 5, pp. 6-10).

#### Prior criminal history

The Board reviews Petitioner's prior criminal history, starting with his juvenile record. Petitioner has no convictions as a juvenile (HT 11:16-24). As an adult, on April 26, 1973, given one year summary probation for entering non-commercial dwelling, while in custody for possession of marijuana charge, on October 19, 1973, convicted of sales and transportation of marijuana, January 7, 1974, Petitioner was convicted of "possession of marijuana and sent to CYA (HT 12:5-7), and has a conviction for "theft from motor vehicle" in the state of New Mexico, being released from custody on April 22, 1978 (HT 12:5-17; EXHIBIT 5, p. 5). None of Petitioner's prior convictions were serious or violent offenses.

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Prior social history

Petitioner began smoking marijuana at the age of 13, and started using heroin on weekends, progressing to a \$200 a day habit by the age of 15 and would take Valium when heroin was not available (HT 14:8-15:2).

Petitioner dropped out of school at age 16 and entered Job Corps, remaining there eleven months learning to operate heavy equipment (HT 15:3-14).

From the Job Corps, Petitioner entered the United States Army, serving as a paratrooper in the Special Forces, being honorably discharged in 1972 (HT 15:14-26). Petitioner stayed free of drugs while in the military and believes he should have stayed in the military (HT 16:1-4).

While incarcerated in New Mexico, Petitioner earned his GED (HT 16:6-7). Petitioner earned certification as a welder during that time, also (HT 16:9-10).

Petitioner lived with a woman for approximately one year in New Mexico (HT 16:11-13), then returned to California where he met and entered into a relationship with Denise Garcia, marrying her in April, 1980, assuming responsibility for her two children, then having a daughter together (HT 16:14-17). Petitioner is now a grandfather (HT 17:5-8), and although divorced from his wife, who was also his crime partner in the instant offense, remains in contact and has support of his children (HT 33:19-20).

Prior to the instant offense, Petitioner was employed as roofer (HT 18:2-10).

Petitioner believes he had a good family life growing up

(HT 18:21-24); there was no abuse in the home (HT 19:1-11).

Parole plans

Petitioner will parole to his mother's home in Oxnard, which she owns (HT 19:15-22), and she will help financially and in any way she can (HT 35:13-20). Petitioner has a firm offer of employment from Ideal Upholstery in Ventura where he will start at \$9.00 an hour (HT 20:6-20). Petitioner has alternative plans, arranging for an interview with a live-in program at the Ventura County Rescue Mission, with the requirements for admittance laid out for the Board (HT 22:23-23:13). Petitioner's daughter will provide housing, and, as her husband is starting his own business, the possibility of employment for Petitioner (HT 36:7-14).

Petitioner also has the support of Martha Duran, a woman whom he married while incarcerated, now divorced (due to the pressures of incarceration), residing in Oxnard and offering housing, and all the support "required so he can be a productive member of society" (HT 37:10-26), the Board finding this to be "very good" (HT 38:1).

Petitioner went to the effort to contact several organizations in the community that can provide housing and other services to re-enter society successfully, California Veterans Assistance, Lutheran Social Services of Southern California, and New Directions of Los Angeles, as well as a pamphlet from Prison Industry Authority of job placement assistance and other services through parole services (HT 39:15-40:11).

Additionally, not only is Petitioner a certified welder, and heavy equipment operator, but since being incarcerated, among other vocational trades, has obtained certification as a paralegal (HT 48:11-13).

Postconviction behavior

It was noted that Petitioner has been "extremely active" since his 2002 hearing (HT 24:18-20), having completed two certifications from Federal Emergency Management in Emergency Preparedness, and Radiological Emergency Management (HT 24:21-24). Petitioner received three laudatory chronos for participation in the Prison Industries Authority employability program (HT 24:24-27), and sixteen laudatory chronos for his continued participation in Alcoholics Anonymous and Narcotics Anonymous (HT 25:1-3).

Petitioner completed a thirteen week IMPACT workshop (a victim's awareness self-help group) (HT 25:9-11).

Although Petitioner has disciplinary write-ups, the last one being in 1993, "there are no write-ups for violence or weapons" (HT 25:24-25).

Petitioner has received "exceptional and above-average work reports" on his job in the furniture factory (HT 25:25-26:5).

Psychological evaluation

Petitioner's psychological evaluation, dated May 11, 2006 (EXHIBIT 8), was prepared by Dr. Macomber, one of the Board's own forensic experts. Highlighting relevant factors, the Board notes: "Dr. Macomber writes that in the past based upon your criminal history you had been diagnosed as having antisocial personality disorder. But at this point in your life there is no evidence of any antisocial thinking or values. That your values are solidly pro-social, you have deep feelings of concern and empathy toward others" and the diagnostic label of antisocial is no longer appropriate (HT 28:7-17; EXHIBIT 8, p. 2). Petitioner has a Global Assessment of Functioning

(GAF) Score of 90 (EXHIBIT 8, p. 3 [the highest score possible, relating to global social functioning]).

Most importantly, relating to current threat to public safety, covered at HT 28:26-29:20, Petitioner quotes directly from Dr. Macomber's evaluation (EXHIBIT 8, pp. 3-4), under assessment of dangerousness:

In considering potential for dangerous behavior when released to the community, the Level of Service Inventory-Revised was administered. This is an actuarial measure that assesses criminal history, substance abuse history, institutional adjustment, social relationships and other factors to determine current risk on parole. He obtained a score of 5.1 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 95 of them. This is a low risk score. At this point in his life, due to maturity, growth, and increased insight, he poses no more risk to society than the average citizen in the community. In fact, based on the positive changes in his life, he probably poses less risk to society than the average citizen.

In response, the Board cogently stated: "That's a conclusion I won't disagree with but that's certainly open to discussion at some other time" (HT 29:20-22, emphasis added). The Board continues, "Under clinical observations and recommendations the doctor writes that prognosis for successful adjustment in the community is excellent" (HT 29:22-25; EXHIBIT 8, p. 4).

Correctional officials agree that Petitioner "would probably pose a low degree of threat to the public at this time, if released from prison" (EXHIBIT 7, p. 4, [that was two years prior]).

#### Opposition to parole

The deputy district attorney representing Los Angeles County, after reiterating the facts of the case (HT 41:20-44:18), believing Petitioner's substance abuse is merely in "institutional remission" (HT 45:2-7), and being critical of Petitioner exercising his constitutional right not to discuss the case or incriminate himself, believing that demonstrates failure to accept responsibility for

the offense (HT 45:7-15), opposed parole (HT 45:20-21).

### D E C I S I O N

In concluding that Petitioner is "not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety" if released from prison (HT 53:12-15), the Board relied on the following findings:

1. The commitment offense, feeling "that the offense was carried out on an especially cruel manner" (HT 53: 21-22), stating the victim "was shot in the head after he stopped to render aid in what he thought were two individuals that were in distress along the side of the freeway" (HT 53:22-26); being "carried out in a very dispassionate and calculated manner" (HT 54:1-2), putting "the two women out on the freeway as a lure and that you were hiding in the bushes and unfortunately it was Mr. Stewart that was the first Samaritan that decided to stop and help. The victim was defiled after the offense in that he was stripped...(HT 54:3-12 [there is absolutely no evidence, and Petitioner denies, that Mr. Stewart was stripped of the clothing he was wearing, see EXHIBIT 5, pp. 6-7]); and the motive "was very trivial" (HT 54:14), in that the "worst case scenario you could have just ordered him out to the side of the freeway but that's neither here nor there at this point n time" (HT 54: 15-18). The Board then reread the statement of facts into the record (HT 54:21-56:3).

2. Prior criminal history, stating Petitioner had "an escalating pattern of criminal conduct and that you had failed previous grants of probation...previous attempts to correct your criminality through the CYA commitment" (HT 56:4-20), citing Petitioner's dismissed



charges and non-violent criminal convictions (HT 56:12-16).

3. Parole plans needed to be shored up, the Board completely ignoring the offer of residence and financial support from Petitioner's mother (HT 19:15-22) and confirmed job offers (HT 20:6-20), criticizing the halfway houses Petitioner contacted as not being satisfactory (HT 56:23-57:3), stating that Petitioner needs a backup plan with a member of his family (which he has), and being critical of the offer of residence and assistance from Ms. Duran whom Petitioner married and divorced while incarcerated (HT 57:21-23), the Board stating, "[i]t might be fine with the next Board but from my experience with the parole division they probably would not approve that" (HT 58:16-19).

4. "[T]he representative from the Los Angeles County District Attorney Office indicating opposition to parole" (HT 58:2-5).

Two factors were considered in Petitioner's favor: (1) "As far as your institutional behavior you have programmed very well" (HT 56:16-18); and (2) "[s]o far as the psychological report prepared by Dr. Macomber in May 2006, it's favorable" (HT 56:22-23). In reference to Petitioner's long ago disciplinary write-ups, the Board stated: "They are not an issue at least with this panel and I can't see them being an issue with the next panel you come before" (HT 60:24-61:1).

The Board recommended that Petitioner "continue in your AA/NA, whichever is available, and continue to earn positive chronos" (HT 58: 7-8).

DECISION BY THE SUPERIOR COURT

The Honorable Steven R. Van Sicklen, Judge, Los Angeles County

Superior Court, found there was "some evidence" to support finding Petitioner unsuitable for parole (EXHIBIT 9), stating, "The Board based its decision on several factors, including the commitment offense." Judge Van Sicklen writes (EXHIBIT 9, pp. 1-2):

"The Court finds there is some evidence to support a finding that 'the motive for the crime is inexplicable or very trivial in relation to the offense' Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(E). 'To fit the regulatory description, the motive must be materially less significant (or more 'trivial') than those which conventionally drive people to commit the offense in question, and therefore more indicative of a risk of danger to society if the prisoner is released than is ordinarily present.' (In re Scott (2004) 119 Cal.App.4th 871, at 893.) In this case, petitioner and his crime partners killed the victim because they needed a ride to Oxnard. The Board was justified in concluding that this motive is materially less significant motive than those motives which conventionally drive people to commit murder, thus indicating that petitioner poses a greater risk of danger to society if released than is ordinarily present."

Judge Van Sicklen also cited the Board finding "that petitioner had an unstable social history prior to the commitment offense, which is a factor tending to indicate unsuitability for parole. (Cal. Code Regs., tit. 15, § 2402, subd. (c)(3))"; concluding, "Heavy drug use, school problems, and prior criminality are some evidence of unstable social history. (In re Van Houton (2004) 116 Cal.App.4th 339, 353.)" (EXHIBIT 9, p. 2).

Judge Van Sicklen rejected Petitioner's argument of, entering into a contract with the state for second degree murder, expecting to be punished for second degree murder and not first degree murder. Petitioner did not argue that he is "entitled to release based on the terms of his plea agreement," but that he has a reasonable expectation to be punished within the legislatively prescribed matrix for second degree murder and not first degree murder.

The trial court relied on In re Rosenkrantz (2002) 29 Cal.4th 616, 667 for the "some evidence" standard (EXHIBIT 9, p. 1), applying only the first prong of the two prong test.

C O N C L U S I O N

Based on the foregoing facts, exhibits in support of the facts, court records in this case, and the attached memorandum of law, it is respectfully requested that this Court issue an Order to Show Cause why relief should not be granted and the Board ordered to conduct a new hearing in accord with due process, or in the alternative, return the writ to the Los Angeles County Superior Court with instructions to vacate its Order of 8/15/07 and reconsider Petitioner's claims in light of this Appellate District's controlling cases: In re Lee (2006) 143 Cal.App.4th 1400, 1408, 1412; In re Lawrence (2007) 150 Cal.App.4th 1511, 1543, 1544, 1551, 1561; and In re Gray (2007) 151 Cal.App.4th 379, 405.


DATED: 17 Sept. 2007

Respectfully submitted,

Victor M. Montez  
Victor M. Montez  
Petitioner in pro per

V E R I F I C A T I O N

I, Victor M. Montez, declare under penalty of perjury that I have read the foregoing facts and hereby state them to be true and correct, and that the exhibits attached hereto in support of the facts are true copies of the original documents, doing so this 17 day of September, 2007 at Soledad, California.

  
Victor M. Montez  
Petitioner in pro per

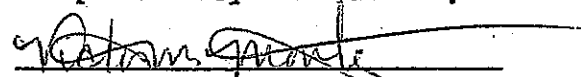
P R A Y E R F O R R E L I E F

I, Victor M. Montez, hereby state that I have no other plain or speedy remedy save habeas corpus, and therefore pray that this Honorable Court will:

1. Order the respondent to show cause why the writ should not be granted;
2. Appoint counsel to protect the rights of Victor M. Montez against the weight and resources of the state;
3. Declare the rights of the parties;
4. Order discovery and/or an evidentiary hearing as needed to further develop the facts of the case;
5. Allow counsel to orally argue the case before the Court;
6. Grant the writ of habeas corpus; and
7. Grant any other relief in the furtherance of justice.

Date: 17 Sept. 2007

Respectfully submitted,

  
Victor M. Montez  
Petitioner in pro per

A P P E N D I X "B"

M E M O R A N D U M O F L A W

Answers to 6 b - Supporting points and authorities

A. The Superior Court Exceeded its Jurisdiction When Making Findings to Support its Decision that were Not Made By the Board of Parole Hearings.

The Superior Court "gives an assist to the Panel by implying findings concerning the commitment offense not articulated in its decision" (In re Roderick (2007) \_\_\_ Cal.App.4th \_\_\_, 2007 WL 2343737, \*13 (8/17/07)). When Comparing the Board's decision to the decision of the Los Angeles County Superior Court (EXHIBIT 9 ), it is apparent the Superior Court, not only did not follow this Appellate District's authority on the issues at bench, but to justify its decision made findings the Board did not make.

The Board stated in its decision, after Petitioner's twenty-six years of imprisonment and rehabilitation: "the offense was carried out in an especially cruel manner" (HT 53:21-22), "being carried out in a very dispassionate and calculated manner" (HT 54:1-2), the victim "was defiled after the offense in that he was stripped" (HT 54:3-12, and the motive "was very trivial" (HT 54:14). There is no evidence the victim was "stripped" of his clothing or that he was "defiled." Moreover, Petitioner has consistently maintained that the shooting was an accident and the prosecution, throughout plea proceedings, not once contested that.

Firstly, Petitioner's account of the commitment offense is the only first hand account available and has never been proved otherwise, or even contested; thus, it has been accepted that the shooting was not intentional but accidental. Therefore, the commitment offense



cannot fit the definition of "dispassionate and calculated" (Cal. Code Regs., tit. 15, § 2402(1)(c)(B) ["such as an execution-style murder"] (EXHIBIT 10)). The Superior Court violated Petitioner's right to due process by allowing that finding to stand. Secondly, in that the commitment offense was unintentional and therefore accidental, there was no motive, therefore the motive could not be "trivial." Thirdly, the finding by the Board that Petitioner's parole plans needed to be shored up, requiring a backup plan with a family member was totally contrary to the evidence, Petitioner having residential and financial support from his mother (HT 19:15-22), confirmed job offers (HT 20:6-20, and half-way houses as a backup plan (HT 56:23-57:3), rendering the decision arbitrary, capricious and whimsical. The Superior Court violated Petitioner's right to due process by allowing this finding to stand. Fourthly, after 26 years of imprisonment, "it is difficult to find [Petitioner's] commitment crime supplies 'some evidence' rationally demonstrating [he represents an unreasonable danger to the public safety at the present time]" (In re Lawrence (2007) 150 Cal.App.4th 1511, 1558). And fifthly, time, 26 years, even if the offense was as depicted by the Board against Petitioner's rehabilitation, "aggravating facts of the crime no longer amount to 'some evidence' supporting denial of parole" (Id., at 1551).

With postconviction conduct credits, constructively, Petitioner has served the equivalent of 34 years, and in calendar years is one (1) year beyond what would have been the 25 year term if convicted of first degree murder, thus, "it is appropriate to consider whether his offense would still be considered especially egregious for a

first degree murder in order to promote the parole statute's goal of proportionality between the length of sentence and the seriousness of the offense" (In re Rosenkrantz (2002) 29 Cal.4th 616, 690, Moreno, J., concurring, emphasis in original).

Additionally, contrary to the Superior Court's findings, to give "an assist to the Panel by implying findings concerning the [decision] not articulated in its decision" (In re Roderick, supra, 2007 WL 2343737, \*13), the Board did not find as an unsuitability factor "that petitioner had and unstable social history prior to the commitment offense, which is a factor tending to indicate unsuitability for parole. (Cal. Code Regs., tit. 15, §2402, subd. (c)(3)) (EXHIBIT 9, p. 2). It is true the Board found Petitioner had "an escalating pattern of criminal conduct and that you failed previous grants of probation... (HT 56:4-20, citing Petitioner's dismissed charges and non-violent criminal conviction (HT 56:12-16)). The Superior Court is mixing apples with oranges.

Firstly, the regulations "distinguish[] between criminal history (§ 2402, subd. (b)) with the latter being defined in terms of social relationships (§ 2402, subd. (c)(3)), as distinguished from criminal activity. The two factors are thus distinct and should not be confabulated" (In re Roderick, supra, 2007 WL 2343737, \*16).

Secondly, arrests and/or convictions for non-violent offenses are not a previous record of violence within the definition of the regulations (Cal. Code Regs., tit. 15, § 2402(c)(2)). To the contrary, in that Petitioner "lacks any significant history of violent crime" (Cal. Code Regs., tit. 15, § 2402(d)(6)) tends to militate toward suitability. Thirdly, contrary to the Superior Court's stating

Petitioner "dropped out of high school when he was sixteen years old...school problems" (EXHIBIT 10, p. 2), there is no evidence that Petitioner dropped out of high school because he was having "problems"; but rather, to join Job Corps, after which he joined the Army (HT 15:3-18). The case relied on by the Superior Court (In re Van Houton (2004) 116 Cal.App.4th 339, 353), is not a comparison, especially in that Van Houton's arrests were while being a member of the Manson family, certainly prejudicing her case. The Superior Court's decision on this issue was arbitrary and an abuse of discretion, violating Petitioner's right to due process.

Finally, although there was no specific terms as to how long Petitioner would be imprisoned on his contract with the State for second degree murder, in that Petitioner has no postconviction violence, has participated in a multitude of rehabilitative programs and is indeed rehabilitated, and has now served five years beyond the maximum legislatively prescribed punishment for second degree murder, the expectations of Petitioner and the spirit of the plea must be given serious consideration.

It appears the Superior Court was bent on denying Petitioner's writ and went in search of makeweight justifications to do so. The findings by the Superior Court were beyond what the Board used to deny parole and were arbitrary. "Accordingly, '[w]e (the courts) must confine our review to the stated factors found by the Board...not to findings that the Attorney General ... suggests the Board might have made" (In re Roderick, *supra*, 2007 WL 2343737, \* 13, citing In re DeLuna (2005) 126 Cal.App.4th 585, 593-594), so can it be said for the Superior Court in case at bench.

The Superior Court's decision in case at bench begs the question: If "[a]n intermediate appellate court is required to follow the holdings of the Supreme Court" (Auto Equity Sales v. Superior Court (1962) 57 Cal.2d 450, 455), are Superior Courts in an Appellate District required to follow the holdings of that Appellate District Court? Especially when those Appellate Court cases, and like cases from other appellate districts, were denied review and have not been depublished, implying, in that the law is a living organism, our Supreme Court is allowing the appellate courts to develop the law as it relates to parole by not granting review or depublishing the cases (see People v. Steele (2000) 83 Cal.App.4th 212, 220).

The Superior Court exceeding its jurisdiction violated Petitioner's right to due process guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. Two of the Board's findings were not supported by any evidence, even contrary to the evidence; thus, Petitioner is entitled to judicial review based on the Board's decision solely relating to the commitment offense in accord with relevant case law (In re Rosenkrantz (2002) 29 Cal.4th 616, 658).

#### B. Standard of Judicial Review

In a detailed analysis of California and federal law, California's Second Appellate District recently held under both the California and United States constitutions, life prisoners in California have a "liberty interest" in parole and judicial review is the "some evidence" standard (In re Lawrence (2007) 150 Cal.App.4th 1511), citing inter alia, Greenholtz v. Inmates of Nebraska Penal and Correctional Complex (hereafter Greenholtz) (1979) 442 U.S. 1; Board

of Pardon v. Allen (1988), 482 U.S. 369; Superintendent v. Hill (hereafter Hill) (1985), 472 U.S. 445; McQuillion v. Duncan (9th Cir. 2002), 306 F.3d 895; Biggs v. Terhune (9th Cir. 2003), 334 F.3d 910; Sass v. California Board of Prison Terms (hereafter Sass) (9th Cir. 2006), 461 F.3d 1123; Irons v. Carey (9th Cir. 2007), 479 F.3d 658; In re Rosenkrantz (2002), 29 Cal.4th 616; In re Dannenberg (2005), 34 Cal.4th 1061). The Lawrence court held, supra, 150 Cal.App.4th, at 1540: "the fact there is 'some evidence' the crime was committed and committed a certain way at a certain time does not mean that crime necessarily represents 'some evidence' the prisoner's release on parole will pose an unreasonable risk of danger to the public safety at the present time. Whether it possesses the necessary predictive value depends both on the nature of the crime and how long ago it happened."

Although the "some evidence" standard of review is highly differential and extremely low, "it does not convert a court reviewing the denial of parole into a potted plant" (In re Scott I (2004) 119 Cal.App.4th 871, 898). The United States Supreme Court "explained that the 'some evidence' standard applies only to questions of evidentiary sufficiency" (In re Ramirez (2001), 94 Cal.App.4th 549, 563-564, explaining Edwards v. Balisok (1997), 520 U.S. 641, 648). Ramirez was disapproved on other grounds (In re Dannenberg, supra, 34 Cal.4th, at 1100). Moreover, as articulated by the United States Supreme Court in the Nation's controlling case: "The decision turns on...primarily what a man is and what he may become rather than simply what he has done" (Greenholtz, supra, 442 U.S., at 10); the premise "[t]he test is not whether some evidence supports the reasons the



Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety" (In re Lee (2006) 143 Cal.App.4th 1400, 1408, Petition for Review denied, depublication denied), clearly articulates the spirit of the law. "'Not only does the passage of time in prison count for something, exemplary behavior and rehabilitation in prison count for something according to Biggs and Irons. Superintendent v. Hill's standard might be quite low, but it does not require that the decision not be arbitrary'" (In re Roderick, supra, 2007 WL 2343737, \*21, quoting McCullough v. Kane (N.D. Cal. 2007) 2007 WL 1593227, \*7, \*8). A two-prong test, therefore, is appropriate. The first prong to determine "sufficiency of the evidence"; and then the second prong, can a "rational connection be made between the evidence and the decision made" finding a CURRENT threat to public safety (see Id., at 1408 fn. 3).

In reviewing a suitability determination, then, the Executive "must remain focused not on the circumstances that may be aggravating in the abstract but, rather, on facts indicating that release currently poses 'an unreasonable risk of danger to society' (§ 2402, subd. (a); accord, Pen.Code, § 3041, subd. (b))" (In re Elkins (2006) 144 Cal.App.4th 475, 499, emphasis added, Petition for Review denied, depublication denied).

The bottom line is, relative to time since the commitment offense and rehabilitation, "whether the inmate will be able to live in society without committing additional antisocial acts" (In re Lawrence, supra, 150 Cal.App.4th, at 1543), "it is not just 'some evidence' to support the Governor's findings, but 'some evidence'

sufficient to satisfy the statute's ultimate test, that is, 'some evidence' the release of Lawrence would subject society to an 'unreasonable risk' of danger to public safety" (Id., at 1544; In re Lee, supra, 143 Cal.App.4th, at 1408). The focus, therefore, is to be on CURRENT parole risk, not a risk over two decades in the past. Thus, if the prisoner has served the minimum term, and there is no evidence he or she is not rehabilitated, the prisoner is to be paroled; if not, it violates due process.

C. The Commitment Offense Is Not Reliable Evidence that Petitioner Is A CURRENT Threat to Public Safety Twenty Years After the Fact.

"The only ground for a parole denial is found in Penal Code section 3041, subdivision (b), which provides that a release date shall be set 'unless [the Board] determines that ... consideration of the public safety requires a more lengthy period of incarceration'" (In re Roderick, supra, 2007 WL 2343737, \*12). The commitment offense, however, loses predictability of threat to public safety over time when weighed against rehabilitation (In re Lawrence, supra, 150 Cal.App.4th, at 1561; In re Lee, supra, 143 Cal.App.4th, at 1412; In re Elkins, supra, 144 Cal.4th, at 500; In re Scott II (2005) 133 Cal.App.4th 573, 594-595; Rosenkrantz v. Marshall (C.D. Cal. 2006) 444 F.Supp.2d 1063, 1065; Sanchez v. Kane (C.D. Cal. 2006) 444 F.Supp.2d 1049, 1062).

Does the evidence of the accidental killing of Mr. Stewart support, by the regulations, that the killing was "especially heinous, atrocious, or cruel"?

In case at bench, Petitioner has maintained from its inception that the killing of Mr. Stewart was an accident, Petitioner's pistol accidentally firing when Mr. Stewart adjusted his seat. Petitioner

had no reason to deliberately shoot, much less kill Mr. Stewart as Mr. Stewart was ready to take the trio to Oxnard. Throughout the plea proceedings (EXHIBIT 2), not once did the prosecution object to the characterization of Mr. Stewart's death being nothing other than an accident. How can any comparison be made to whether or not the motive was "materially less significant (or more 'trivial') than those which conventionally drive people to commit the offense in question" (EXHIBIT 9, p. 1)? It cannot.

This finding is not supported by the evidence, violating Petitioner's right to due process.

The commitment offense could not have been "dispassionate and calculated" as the Board declared (HT 54:1-2; Cal. Code Regs., tit. 15, § 2402(c)(1)(B) ["The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder"]). The accidental killing of Mr. Stewart does not fit the definition of "execution-style murder" (see EXHIBIT 10). The kidnapping of Mr. Stewart at gunpoint to procure a ride may be characterized as "dispassionate and calculated," but not the accidental killing of Mr. Stewart (In re Elkins, *supra*, 144 Cal.App.4th, at 497). The focus, therefore, must be "on the life-term offense" (*Id.*). Calculated denotes planning and premeditation. In that Petitioner was convicted of second degree murder, in a plea agreement only to the minimum elements of the offense, "malice aforethought" (EXHIBIT 2, p. 5), the State is now precluded from retrying the case and finding elements of first degree murder, especially when those elements were not there to begin with (In re Gray (2007) 151 Cal.App.4th 379, 405-407).

This finding was not supported by the evidence, violating Petitioner's right to due process.

The Board also found that Mr. Stewart "was defiled after the offense in that he was stripped, his body was concealed along the shoulder of the Ventura Freeway and just basically left in the shrubbery" (HT 54:8-12). There is absolutely no evidence that Mr. Stewart was "stripped" of his clothing. In fact, the evidence is the contrary (EXHIBIT 5, pp. 6-7 ["The victim's pants were open and partially down, the zipper was partially broken and the top button pulled off"]). This most likely was caused when Mr. Stewart was dragged out of his car and across the ground, but it certainly is not any evidence he was defiled, that is, he was raped (see People v. Moore (1961) 196 Cal.App.2d 91).

In that most murderers try to cover their tracks to avoid prosecution, doing so certainly is not defilement, nor provides some evidence of current threat to public safety (In re Lawrence, supra, 150 Cal.App.4th, at 1561; In re Cooper (2007) \_\_\_\_ Cal.App.4th \_\_\_\_, 2007 WL 2164237, \*14 (filed 7/27/07)). There is no evidence that Petitioner "defiled" Mr. Stewart, thus this finding violated Petitioner's right to due process.

How must punishment for the commitment offense, an indeterminate sentence with the possibility of parole, therefore, be weighed?

An indeterminate sentence under the Uniform Determinate Sentencing Act of 1976 (UDSA) is a "hybrid" (In re Dannenberg, supra, 34 Cal.4th, at 1083), applying both the rehabilitation model of the repealed indeterminate sentencing law (ISL) and punishment model of the UDSA. Punishment and rehabilitation are two lines on a graph

and when the two lines exceed at, or after, the time line, the prisoner must be paroled. "For example, the provision under which [Petitioner] was sentenced provides that a person guilty of second degree murder 'shall be punished' in the state prison for a term of 15 years to life" (In re Morrall (2002) 102 Cal.App.4th 280, 289). The Morrall court continued: "With respect to persons sentenced to indeterminate terms, the purpose of punishment is satisfied by the requirement of service of a minimum period before eligibility for parole" (Id., at 292); thus, punishment is based on the crime. On the other hand, under the ISL, the law operated "to mitigate the punishment which would otherwise be imposed upon the offender. These laws place emphasis upon the reformation of the offender. They seek to make the punishment fit the criminal rather than the crime" (In re Minnis (1971) 7 Cal.3d 639, 644).

Petitioner's commitment offense occurred on August 10, 1980, and has been incarcerated since August 11, 1980. Accepting a plea agreement for second degree murder, Petitioner's minimum eligible parole date (MEPD) was reached on April 9, 1990 (EXHIBIT 6, HT 1). With conduct credits, 4 months for each year without a serious CDC 115 (Cal. Code Regs., tit. 15, § 2410), Petitioner has constructively served 34 years, nine years beyond the minimum term for first degree murder, and 16 years beyond his MEPD for second degree murder.

Relevant to case at bench is In re Weider (2006) 145 Cal.App.4th 570, 582-583, in which the court noted:

"[I]t should be self evident that after an inmate has served the equivalent of 25 years, whether his actions were more than minimally necessary for a second degree conviction ... is no longer the appropriate question. [The Board's] position, that inmates who were only convicted of second degree may forever be denied parole based on some modicum of evidence that their acts rose to the level



of a first, without acknowledging the fact that they have already served the time for a first, should be seen as so ridiculous that simply to state it is to refute it."

As the Ninth Circuit instructed in Irons v. Carey, supra, 479 F.3d, at 665:

"We hope that the Board will come to recognize that in some cases, indefinite detention based solely on an inmate's commitment offense, regardless of the extent of his rehabilitation, will at some point violate due process, given the liberty interest that flows from the relevant California statutes."

There is no doubt Petitioner has served the legislatively prescribed term for second degree murder. Having done so, the commitment offense can no longer be a factor, as that line on the graph has been satisfied. Parole suitability, therefore, turns on rehabilitation: Is there any evidence "whether the inmate will be able to live in society without committing additional antisocial acts" (In re Lawrence, supra, 150 Cal.4th, at 1543, citing In re DeLuna, supra, 126 Cal.App.4th, at 591, quoting In re Rosenkrantz, supra, 29 Cal.4th, at 655, emphasis added by Lawrence court).

Petitioner has not received a disciplinary write up or counseling chrono since 1993, and "there are no write-ups for violence or weapons" (HT 25:24-25). Petitioner has completed several self-help programs (HT 24:18-25:11), also having "exceptional and above average work reports" (HT 25:25-26:5). The Board noted of Dr. Macomber's, forensic evaluation that Petitioner had previously "been diagnosed as having antisocial personality disorder, there is no evidence of any antisocial thinking or values. That your values are solidly pro-social, you have deep feelings of concern and empathy toward others" and the diagnostic label of antisocial is no longer appropriate (HT 28:7-17; EXHIBIT 8, p. 2). It was Dr. Macomber's

expert opinion that, "due to maturity, growth, and increased insight, he poses no more risk to society than the average citizen in the community. In fact, based on the positive changes in his life, he probably poses less risk to society than the average citizen: (EXHIBIT 8, p. 4). The Commissioner stated, of the finding, "That's a conclusion I won't disagree with..." (HT 29:20-22).

When "the record provides no reasonable grounds to reject, or even challenge, the findings and conclusions of the psychologist and counselor concerning [Petitioner's] dangerousness" the Board may not do so (In re Smith (2003) 114 Cal.App.4th 343, 369). "The evidence must substantiate the ultimate conclusion that the prisoner's release poses an unreasonable risk of danger to the public. It violates a prisoner's right to due process when the Board or Governor attaches significance to evidence that forewarns no danger to the public" (In re Tripp (2007) 150 Cal.App.4th 306, 313). Petitioner has satisfied punishment under the UDSA model, and there is no evidence he is not rehabilitated under the ISL model, thus finding him unsuitable for parole violated his right to due process.

D. Petitioner's Parole Plans Were Not Some Evidence He Is Unsuitable for Parole.

The Board did not outright reject Petitioner's parole plans, but stated he needs to "have a firm backup plan that's very comprehensive with a member of the family" (HT 57:4-6). The Board also told Petitioner if his family is in another county: "we have the authority to parole you into that county" (HT 57:8-13).

Petitioner provided to the Board letters from "family members" offering housing, finances, and whatever resources he may need upon parole, the first from Petitioner's mother (HT 35:13-20), and another

from Petitioner's daughter (HT 36:7-14). Petitioner's mother and daughter are "family members." Additionally, Petitioner provided a firm job offer with a starting wage of \$9.00 an hour (HT 20:6-20). Although these offers are in Ventura County, the Board told Petitioner they have the authority to parole him into that county" (HT 57:8-13).

Additionally, Petitioner has marketable skills that can be put to use upon parole, inter alia, being a certified welder, heavy equipment operator, plumber, and paralegal (HT 48:11-13).

The evidence presented, Petitioner having parole plans with housing with his mother or sister, juxtaposed to the Board's finding that Petitioner needs parole plans with family members, is so lacking in evidentiary support that it is supported by zero evidence. The Board's regulations require one of two things: "The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release" (Cal. Code Regs., tit. 15, § 2402(d)(8)). "Thus, based on its clear language, the regulation's requirement that an inmate have parole plans is limited to requiring realistic plans" (In re Andrade (2006) 141 Cal.App.4th 807, 817). Not only did Petitioner have "realistic plans for release" in that he has housing with his mother and a firm job offer, but the record contains several vocational skills Petitioner has, "marketable skills that can be put to use upon release." "By referring to 'realistic' parole plans, the regulation does not contemplate iron-clad and unrealistic plans" (Id.).

This finding is so lacking in evidence that it is not only arbitrary and capricious, but based on whim, reducing Petitioner's hearing to a sham and violating his right to due process.

E. Petitioner's Contract With the State for Second Degree Murder Creates A Reasonable Expectation to Be Punished for Second Degree Murder and Not First Degree Murder.

On March 26, 1982 Petitioner entered into a contract with the state of California to plead guilty to one count of second degree murder in violation of Penal Code § 187 with the use of a firearm in violation of Penal Code § 12022.5, to be sentenced pursuant to Penal Code § 190, 15 years to life, plus two years. It has been 25 years since that plea agreement, and 27 years since the commitment offense.

When a crime is divided into degrees and the defendant pleads guilty to the lesser degree, he or she cannot be punished for the greater degree (Penal Code § 1192.1; § 1192.2). When Petitioner entered into a contract with the state, although there was no specific time agreed to for Petitioner's punishment, it was implied that Petitioner would be punished proportionate to second degree murder, not first degree murder, the proportionate term being set out in Cal. Code Regs., tit. 15, § 2403(c), 15 to 21 years. "[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be a part of the inducement or consideration, such promise must be fulfilled" (Santobello v. New York (1971) 404 U.S. 257, 262). If the language of the contract is ambiguous, it must be interpreted to the benefit of the defendant as he understood it (Buckley v. Terhune (9th Cir. 2006) 441 F.3d 688, 695). If Petitioner would have agreed to pled guilty to second degree murder with an expectation to be punished for first degree murder, he would have been declared incompetent and not allowed to enter a plea. And, if the prosecution can dupe a defendant into

waiving his constitutional rights and guarantees of a trial only to later try the case as a first degree murder before an administrative agency, what then was the purpose of the plea bargain? In such a situation it is impossible to conclude that Petitioner's plea was "voluntary" (Henderson v. Morgan (1976) 426 U.S. 637, 646).

It is disingenuous for the State to give up certain benefits of a trial then revisit what was given up at the parole suitability hearing using the very same factors which were considered when Petitioner was involved in the criminal process. In determining the sentence Petitioner should receive, at the inception of the process, the district attorney exercised some discretion in considering factors such as the manner in which the crime was committed, motive, previous criminal history and the like, in reaching a charging decision within the parameters of the law. If a case is bargained out of the process with a determination based on the law and circumstances an indeterminate term of incarceration with the possibility of parole is the appropriate sentence, again, the very same factors set forth in the parole suitability regulations are the factors obviously considered at plea bargaining time--again within the parameters of the law. A sentence is then imposed with the settled expectation that the possibility of parole is not a sham, but that a meaningfully possibility exists. And, that possibility, if meaningful, has to be based on future behavior as the past cannot be undone, and was already considered. The California parole regulations have the potential, nonetheless, to allow for reinstitution of the sentencing process such that if a commissioner or a governor does not like the fact that a certain defendant was

granted parole, the established possibility of parole evaporates simply because of a latter day redetermination that the offense was egregious, or the motive was trivial, etc.--something that was obviously apparent at the time the possibility of parole sentence was issued. Such as case at bench, the Board finding the offense was "dispassionate and calculated, such as an execution-style murder" and the motive was "trivial."

What we have is, the very same factors that were considered at the inception for Petitioner to be punished for second degree murder, between 15 and 21 years, the seriousness of the offense, or related factors, now preclude the possibility of parole. While it is perfectly fine to have a system where no possibility of parole exists for any murder, it is not perfectly fine to have a parole system that is based on misrepresentation.

A plea of guilty is only an admission to the elements of the offense as charged, not as it might have been charged (People v. Jerome (1984), 160 Cal.App.3d 1087, 1096; Henderson v. Morgan, *supra*, 426 U.S., at 647 fn. 18; Apprendi v. New Jersey (2000), 530 U.S. 466, 526-528, Justice O'Connor, dissenting; United States v. Wuco (9th Cir. 1976), 535 F.2d 12, 1202 fn. 1 ["it is the statement of facts in the pleading, rather than the statutory citation that is controlling"]);. Relevant to the murder of Mr. Stewart, Petitioner was charged with the minimum elements of the offense, "malice aforethought" (EXHIBIT 1; Petitioner pled guilty to exactly that (EXHIBIT 2, p. 6:13-19; p. 7:18-22), and no more. That was Petitioner's contract.

When Petitioner entered into a contract for second degree murder,



and has served the minimum term for first degree murder, and with conduct credits exceed, constructively, the maximum term for first degree murder, 33 years, his sentence has been transmuted into one of life without the possibility of parole, something he did not bargain for, violating his right to due process.

F. Opposition From the District Attorney Is Not Some Evidence.

The Board, and Superior Court, noted the Los Angeles County District Attorney's Office opposed parole (HT 58:2-5). This is not an unsuitability factor.

Both the state and federal courts have held that opposition by the district attorney, or victims, is not a factor within the regulations and guidelines upon which the Board can deny parole (In re Weider, supra, 145 Cal.App.4th, at 590; In re Barker, supra, 151 Cal.App.4th, at 375; Rosenkrantz v. Marshall, supra, 444 F.3d, at 1080 fn. 14).

C O N C L U S I O N

It was expressly pointed out in In re Lawrence, supra, 150 Cal.App.4th, at 1538, referring to Irons v. Carey, supra, 479 F.3d, at 665, the Ninth Circuit "expressly embraced the Biggs rationale and indeed emphasized its denial of relief was only for the time being - indeed predicated on the fact the prisoner had not yet served the minimum time required for the offense he committed." As opined by the Ninth Circuit: "We hope that the Board will come to recognize that in some cases, indefinite detention based solely on an inmate's commitment offense, regardless of the extent of his rehabilitation, will at some point violate due process, given the liberty interest in parole that flows from the relevant California statutes" (Irons

v. Carey, supra, 479 F.3d, at 665).

WHEREFORE, Petitioner having satisfied his minimum term, even exceeding the maximum legislatively prescribed punishment set forth in the Board's matrix for second degree murder, and having been fully rehabilitated and thereby fulfilling the implied end of the plea agreement, it is respectfully requested that the Court issue an Order to Show Cause why relief should not be granted and the Board ordered to conduct a new hearing that satisfies due process of law, basing the decision on Petitioner's rehabilitation. Or, in the alternative, remand the writ to the Los Angeles Superior Court with instructions to follow this Appellate District Court's decisions in In re Lawrence, supra, 150 Cal.App.4th, at 1542; In re Lee, supra, 143 Cal.App.4th, at 1408, 1412; In re Gray, supra, 151 Cal.App.4th, at 403; In re Rosenkrantz, supra, 29 Cal.4th, at 683.

DATED: 17 Sept 2007

Respectfully submitted,

Victor M. Montez  
Victor M. Montez  
Petitioner in pro per

**EXHIBIT 3**  
**Part 2 of 4**

EXHIBIT "1"



255

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

The People of the State of California,

Plaintiff,

VICTOR MANUEL MONTEZ  
and  
DENISE MARIE MONTEZ,

Defendants

No. 1148105

INFORMATION

MURDER (Sec. 187, P.C.) - Ct. II  
ROBBERY (Sec. 211, P.C.) - Ct. II  
ATTEMPTED KIDNAPPING (Sec. 664/209,  
P.C.) - Ct. III

The said VICTOR MANUEL MONTEZ and DENISE MARIE MONTEZ

are  
accused by the District Attorney of and for the County of Los Angeles, State of California, by this  
information, of the crime of MURDER, in violation of Section 187, Penal Code of  
California,

a felony, committed as follows: That the said VICTOR MANUEL MONTEZ and DENISE MARIE MONTEZ

on or about the 10th day of August, 1980, at and in the County of Los Angeles, State of California,  
did willfully and unlawfully, and with malice aforethought murder Michael Stewart, a  
human being.

It is further alleged that the murder of Michael Stewart was committed by  
defendant VICTOR MANUEL MONTEZ while the defendant was engaged in the com-  
mission of robbery in violation of Penal Code Section 211 within the meaning  
of Penal Code Section 190.2(a)(17).

It is further alleged that the murder of Michael Stewart was committed by  
defendant DENISE MARIE MONTEZ while defendant was an accomplice in the com-  
mission of robbery in violation of Penal Code Section 211, within the meaning  
of Penal Code Section 190.2(a)(17).

It is further alleged that the murder of Michael Stewart was committed by  
defendant VICTOR MANUEL MONTEZ while the defendant was engaged in the attempted  
commission of kidnapping in violation of Penal Code Sections 207 and 209,  
within the meaning of Penal Code Section 190.2(a)(17).

SEE SPECIAL ALLEGATIONS CONTINUED ON ATTACHED SHEET

Filed in open Superior Court of the State of  
California, County of Los Angeles, on motion  
of the District Attorney of said County.

DATED:

JOHN J. CONCORAN, Clerk

BY

Deputy

JOHN J. WANDERLAMP, District Attorney

for the County of Los Angeles, State of California

By

Deputy

20150825-1148105-00000000

Filed in open Superior Court of the State of  
California, County of Los Angeles, on motion

JOSEPH R. SMITH, District Attorney

for the County of Los Angeles, State of California

EXHIBIT "2"



ORIGINAL FILED

APR 15 1982

COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT BK R

HON. DAVID A. HOROWITZ, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, )

Plaintiff, )

NO. A 146 105

vs. )

PLEA

VICTOR MANDEL MONTEZ,  
DENISE MARIE MONTEZ,

Defendants. )

VAN NUYS, CALIFORNIA; FRIDAY, MARCH 26, 1982; 9:25 A.M.

Upon the above date, the defendants being present in court and represented by counsel, CARL BUPKOW, Esq. representing defendant Victor, IRVIN BRANCHY, Deputy Public Defender of the County of Los Angeles representing defendant Denise, the People being represented by IRVIN COHEN, Deputy District Attorney of the County of Los Angeles, the following proceedings were held:

(Ronnie Frankfurt, Official Reporter, CSR #2312.)

THE COURT: 203, 204, Victor Montez and Denise Marie

1 MONTAÑA.

2 MR. FRANKS: Your Honor, at this time I believe the  
3 District Attorney has gotten together and has understood what  
4 the plea agreement is.

5 MR. COHEN: That is correct. I have conferred with Mr.  
6 Weisberg and it is my understanding that--

7 THE COURT: Can you hear?

8 A DEFENDANT: Not that good.

9 THE COURT: Speak up, Mr. Cohen.

10 MR. COHEN: Yes, Your Honor.

11 Since the matter was previously called, I have  
12 discussed the case with Mr. Weisberg who is the trial Deputy  
13 District Attorney.

14 It is my understanding that it is agreeable  
15 with the People that if the defendant Victor Montañá withdraws  
16 his previous plea of not guilty to a violation of Section 187  
17 of the Penal Code, that being the charge of murder, and enters  
18 a guilty plea to that charge as murder in the second degree  
19 and admits the use of a firearm, to-wit, a handgun, that this  
20 would be agreeable with the People.

21 The defendant's exposure to time in custody would  
22 be from 27 years to life.

23 As to the defendant Denise Marie Montañá, it is  
24 the People's intention to add an additional count, violation of  
25 Section 22 of the Penal Code, accessory after the fact.

26 It is my understanding the defendant Denise  
27 Montañá will enter a plea of guilty to that charge.

28 The maximum exposure to time in custody for

that charge is an open plea, and the maximum time she can serve is up to three years in the State Prison, the sentence being up to the court.

Have I accurately outlined the disposition of this case, Mr. Pransky?

MR. PRANSKY: Yes.

MR. COHEN: Mr. Burkow?

MR. BURKOW: Yes.

MR. COHEN: Mr. Montez, did you understand what I said concerning the disposition of this case?

DEFENDANT VICTOR MONTEZ: Yes, sir, I did.

MR. COHEN: Is it your desire to enter a plea as I outlined in the disposition?

DEFENDANT VICTOR MONTEZ: Yes, sir.

MR. COHEN: At this time do you withdraw your previous plea of Not guilty to the murder charge so you can enter this plea?

DEFENDANT VICTOR MONTEZ: Yes, sir.

MR. COHEN: Has anyone made any other promises to you other than what I have said in open court to get you to enter this guilty plea?

DEFENDANT VICTOR MONTEZ: No, sir.

MR. COHEN: Mr. Pransky, may it be stipulated that an additional count be alleged as to your client, a violation of Section 32 of the Penal Code, that being the felony of accessory after the fact?

MR. PRANSKY: So stipulated.

MR. COHEN: Waive further reading of the amendment and



statement of rights as to the amendment?

MR. PRINCE: So waive further reading.

MR. COHEN: Denise Montes, do you understand what I said as to the disposition of this case concerning yourself?

DEFENDANT DENISE MONTES: Yes.

MR. COHEN: Is that your desire to proceed in that manner?

DEFENDANT DENISE MONTES: Yes.

MR. COHEN: Has anyone made any other promises to you other than what I have said in open court to get you to enter this guilty plea?

DEFENDANT DENISE MONTES: No.

MR. COHEN: I must advise each of you that if you are not citizens of the United States that the entry of these guilty pleas may have the consequences of deportation, exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United States.

If you are citizens of the United States, this would not apply to you.

Further, in order for each of you to enter these guilty pleas you must know, understand and give up certain constitutional rights.

Each of you have the right to a trial by jury or, if both sides agree, you can have a trial by the judge.

Each of you have a right to confront witnesses against you in open court and have your attorneys cross-examine these witnesses.

Each of you have a right to present a defense

by having witnesses brought into court who would testify for you by using the subpoena powers of the court at no cost to either of you.

Finally, each of you have the right against self-incrimination. This means that neither of you have to say anything against yourself.

Now, Mr. Victor Montez, have you discussed all these rights with your attorney Mr. Burkow?

DEFENDANT VICTOR MONTEZ: Yes, sir, I have.

MR. COHEN: After discussing these rights with Mr. Burkow, do you believe you understand them?

DEFENDANT VICTOR MONTEZ: Yes, sir.

MR. COHEN: Understanding these rights and knowing that you must give them up in order to enter this guilty plea, do you give up these rights?

DEFENDANT VICTOR MONTEZ: Yes, sir.

MR. COHEN: Mr. Burkow, join?

MR. BURKOW: Join in the waiver.

MR. COHEN: Denise Montez, have you discussed all these constitutional rights with your attorney Mr. Prznaky?

DEFENDANT DENISE MONTEZ: Yes.

MR. COHEN: After discussing these rights with Mr. Prznaky, do you believe you understand them?

DEFENDANT DENISE MONTEZ: Yes.

MR. COHEN: Understanding these rights and knowing that you must give them up in order to enter this guilty plea, do you give up these rights?

DEFENDANT DENISE MONTEZ: Yes.



1 MR. COHEN: Mr. Victor Montes, are you pleading guilty  
2 or entering this plea freely and voluntarily?

3 DEFENDANT VICTOR MONTEZ: Yes, sir, I am.

4 MR. COHEN: Denise Montes, are you entering this plea  
5 freely and voluntarily?

6 DEFENDANT DENISE MONTEZ: Yes.

7 MR. COHEN: Has anyone used any force or threats of  
8 force or anything similar to that against either of you in  
9 order to get you to enter these pleas, Victor Montes?

10 DEFENDANT VICTOR MONTEZ: No.

11 MR. COHEN: Denise Montes?

12 DEFENDANT DENISE MONTEZ: No.

13 MR. COHEN: Victor Montes, is it a correct statement  
14 that in the county of Los Angeles you did unlawfully kill  
15 another human being with malice aforethought? Is that what  
16 you did?

17 DEFENDANT VICTOR MONTEZ: Pardon me?

18 MR. COHEN: Is that what you did?

19 DEFENDANT VICTOR MONTEZ: Yes, I did.

20 MR. COHEN: In the commission of this particular  
21 offense, did you personally use a handgun?

22 DEFENDANT VICTOR MONTEZ: Yes, I did.

23 MR. COHEN: Counsel, stipulate to a factual basis for  
24 the pleas?

25 MR. BURELOW: Stipulate.

26 MR. COHEN: Denise Montes, is it a correct statement  
27 that you knew after this murder had been committed that you  
28 harbored concealed and aided your co-defendant with the intent

that your co-defendant avoided or escaped arrest, trial, conviction or punishment for this offense?

Is that what you did?

DEFENDANT DENISE MONTEZ: Yes.

MR. COHEN: Counsel, stipulate to a factual basis for the plea?

MR. PRANSKY: So stipulated.

THE COURT: Excuse me. Victor Montez, Mr. Montez, do you understand that at the end of doing your actual time in custody in the State Prison that you would be subject to parole?

Do you understand that?

DEFENDANT VICTOR MONTEZ: Yes.

THE COURT: Mrs. Montez, likewise if you should end up in State Prison on this matter when you finish doing your actual time in custody you also will be subject to parole.

Do you understand that?

DEFENDANT DENISE MONTEZ: Yes.

MR. COHEN: Victor Mandel Montez, in this case A 146 105 to a violation of Section 187 of the Penal Code, that being the felony of murder in the second degree, how do you plead, guilty or not guilty?

DEFENDANT VICTOR MONTEZ: Guilty.

MR. COHEN: As to the allegation that in the commission of this murder you personally used a firearm, do you admit or deny that?

DEFENDANT VICTOR MONTEZ: I admit.

MR. COHEN: Counsel, concur in the plea?

MR. BURICK: Concur.

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MR. COHEN: Denise-Marie Montez, to the violation of  
Section 32 of the Penal Code, that being the felony of  
accessory, after the fact, how do you plead, guilty or not  
guilty?

DEFENDANT DENISE MONTEZ: Guilty.

MR. COHEN: Mr. Pransky, concur in the plea?

MR. PRANSKY: Counsel concurs in the plea.

THE COURT: All right. The court finds as to each  
defendant they have knowingly, understandingly and intelligently  
given up their constitutional rights. The plea is made freely  
and voluntarily with an understanding of the nature and the  
consequences thereof.

The court finds there is a factual basis for the  
plea. The court accepts the plea.

MR. PRANSKY: April 21st, Your Honor?

THE COURT: 21, no. After the 23rd.

MR. PRANSKY: April 23rd?

THE COURT: 23rd. Probation and sentence hearing  
April the 21st, 9:00 o'clock. Both of you are ordered back at  
that time.

MR. PRANSKY: Your Honor, I want to be heard as to bail  
in this matter.

THE COURT: Go ahead.

MR. PRANSKY: Your Honor, bail in this matter has been  
in excess of \$50,000.00. In addition thereto, there has been a  
\$20,000.00 bail imposed upon my client on a misdemeanor matter  
in Ventura County.

She has now entered a plea of guilty to an



offense which carries a maximum of three years. She has been in custody for 19 months.

This matter has gone to the Court of Appeals and it has gone up to the Supreme Court.

Immediately following the Supreme Court's ruling, I started to negotiate this case with Mr. Weisberg, and he came to an agreement that as to my client the worst that they could ever prove would be an accessory after the fact.

This was an unfortunate situation. But I honestly believe that Mr. Montez never intended to kill the victim; that this was strictly an accident.

My client's wife or -- I should say, excuse me -- the wife of Mr. Montez was present at the time; that she was quite frightened. She was upset as well as Mr. Montez being quite upset.

They did not know what to do under the circumstances.

I think that it is only natural that a wife would come to the assistance of her husband.

The extent of her being accessory after the fact is driving the vehicle back to Oxnard where they had originally -- where their original destination.

The victim had agreed to take them to Oxnard, but unfortunately by accident he was killed.

The other part of this accessory after the fact is that my client and her husband temporarily resided in a motel for probably less than 24 hours.

I would urge the court, since she has done 19

months, the maximum that she would have to do would be three years.

7  
Although she has a prior record, she has never been to State Prison and I don't believe she has any felony convictions.

What would probably be done in this particular case at the worst would be to impose the mid-term, because I cannot foresee any elements in aggravation.

Considering what her involvement was as a wife who was there to assist her husband under the worst of circumstances, if she got two years in the State Penitentiary she will have already served that time, since one does 16 months on two years.

If the court saw fit to place her on probation, she really would only have approximately five months more to do if she was ever incarcerated in the future.

I think Ventura County on a 647B violation of probation has been totally unreasonable in setting a bail of over \$20,000.00.

By the court releasing her on her own recognizance, it would require the Ventura County to come and pick up Miss Montez, and she could clear up that matter prior to probation and sentencing.

I urge the court on behalf of Mrs. Montez to release her on her own recognizance. She has been in the county jail under the worst of circumstances because she has been charged with a 187. She was in a special barracks.

It was only recently that she was allowed to



work in the kitchen. Now she stands convicted of the least serious of all felonies.

THE COURT: What is the People's position?

MR. COMEN: I have no idea what the People's position is, Your Honor.

MR. PRANSKY: I would ask this: --

MR. COMEN: I was trying to get hold of Mr. Weisberg to see what his position was. His line has been busy for the last ten minutes while Mr. Pransky has been --

MR. PRANSKY: Additionally, I would add this, Your Honor: That Mrs. Montez while she was incarcerated did give birth. There is a child.

Her time should be reduced as quickly as possible and she would like to get there as quickly as possible.

Under the totality of the circumstances, I don't think the court would certainly be misplacing any confidence or abusing its discretion by leaving her out OR.

THE COURT: Okay. Mr. Burkow, do you wish to be heard on this matter?

MR. BURKOW: Yes, I do have an additional request.

THE COURT: Go ahead.

MR. BURKOW: I understand there is no opposition if somehow there is a way they could visit today under --

THE COURT: They can visit today. It is agreeable with me if it is agreeable with the sheriff.

MR. BURKOW: Could Your Honor request that through the sheriff somehow that they be permitted to visit today? If possible, prior to their being taken back --

THE BAILIFF: For a couple moments if I want to sit here, yes.

MR. BURLOW: We were --

MR. FRANEY: We were somewhat promised by Mr. Mayer that they would have some time together.

THE COURT: Let's try to arrange that. Have you heard from Mr. Weisberg?

MR. COHEN: No, I haven't, Your Honor. I am working on it.

THE COURT: Let us hold that matter then. I want to hear from the District Attorney.

MR. BURLOW: May I then be excused?

THE COURT: Yes, you are finished.

MR. BURLOW: Thank you, Your Honor.

MR. COHEN: Your Honor, on that matter I have just spoken to Mr. Weisberg. His feeling is that the People oppose an OR release.

THE COURT: Did he have any reason?

MR. COHEN: Apparently it is a State Prison case.

THE COURT: All right.

(Recess taken in this matter.)

11:25 A.M.

THE COURT: 204 Montez, all right. In this matter Denise Montez on the OR motion --

MR. COHEN: Your Honor, in that particular matter apparently it is Mr. Weisberg's position that she should not be released on her own recognizance.

Apparently, there is just a very short time until her sentence date. Mr. Weisberg's feeling is that there is a good possibility if she is released on her own recognizance she wouldn't report to the probation officer.

Further, that in the past she has had a failure to appear in Ventura County, and also based on the nature of the offense that she should not be released at this time.

MR. FRANSKY: In answer to that, Your Honor, as stated by Mr. Burkow, there are so many equities in this particular case that I overlooked probably the most important one is the fact that she did while in custody give birth to a child who is in the care of her mother.

Mrs. Montez has worked in the Oxnard area almost all of her life. She has been informed that her mother is ill, that the child is ill.

She failed to appear on that Ventura matter and I think that is on the basis of failing to pay a fine.

I am sure that she has a very keen interest in what happens to her husband as well as what happens to her.

There is just five months more that if she would have to serve, if the court gave her the maximum.

I don't believe that there is any risk that she would not come back to this court. If she has all those matters cleared up in Ventura, and I anticipate that that would summarily take care of the matter in Ventura.

THE COURT: All right. In this matter, the Bail is reduced to \$2,500.00. Motion to reduce to OR is denied.

MR. FRANSKY: Thank you.

(proceedings adjourned)



SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT IV R HON. DAVID A. BOWEN, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

VICTOR MANDEL MONTES,  
DENISE MARIE MONTES,

Defendants.

NO. 116-188

REPORTER'S  
CERTIFICATE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, BONNIE FRANKFURT, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing is a true and correct transcript of all of the admissions given and waivers and admissions taken at the time of the taking of the plea in the above-entitled cause.

Dated this 13th day of April, 1982.

RECEIVED  
APR 13 1982  
CLERK OF COURT

Bonnie Frankfurt CSR #233  
Official Reporter

EXHIBIT "3"



ORIGINAL FILED

JUL 13 1982

COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 8

HON. DAVID A. BOROWITZ, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

VICTOR MANUEL MONTE,

Defendant.

NO. A 146105

STATE PRISON

VAN NUYS, CALIFORNIA; FRIDAY, MAY 21, 1982; 10:20 A.M.

Upon the above date, the defendant being present in court and represented by counsel, CARL BORKOW, Esq., the People being represented by RALPH RAYER, Deputy District Attorney of the County of Los Angeles, the following proceedings were held:

Alexander Walsh, Official Reporter, USB #441.

THE COURT: Number 302, Victor Montel.

As of April 23, he had 618 days actually served.  
What is the total now?

1 MR. BERNARD: As of -- I did not compute it from the  
2 23rd of April on, but I think that today would make it another  
3 29 days, which would make it 148 days.

4 THE COURT: Okay.

5 The court has read and considered the probation  
6 report.

7 Waive arraignment for judgment?

8 MR. BERNARD: Yes, Your Honor. There is no legal cause.

9 THE COURT: Do you wish to be heard?

10 MR. BERNARD: I would just briefly ask the court to  
11 understand one thing. I think the sentence is locked in as  
12 far as the sentencing is concerned. I think that's pretty  
13 much preordained. But I think on behalf of Mr. Montez I'd  
14 be less than open with the court if I didn't indicate that this  
15 individual is not the same individual who was arrested on the  
16 night in question. He has undergone many, many changes.

17 He would hope that the court -- society would  
18 somehow understand that. But at no time was it his intention  
19 to have the incident culminate in the way that it did. He's  
20 had enough that he admitted that there was a crime involved,  
21 but it certainly in his mind had never but for an accident and  
22 his rash judgment in having a weapon would have never ended  
23 in the way that it did. He would hope that somehow the court  
24 would understand that and the prison authorities would  
25 understand that.

26 With that it's submitted, Your Honor.

27 THE COURT: I agree with you. It's unfortunate to see  
28 a person who was honorably discharged, a paratrooper in the

1 special Forces ending up with seventeen to life in the State  
2 Prison. It's very unfortunate, Mr. Montez. I hope you are  
3 successful in the future.

4 Very well. In this matter probation is denied.  
5 You're sentenced to the State Prison for a period of seventeen  
6 years to life. It's fifteen to life plus the enhancement,  
7 12022.5, which is an additional two years. Seventeen to life  
8 is the total.

9 Given credit for 465 days actually served plus  
10 234 days good time and work time.

11 Motion on remaining counts?

12 MR. MAYER: To dismiss, Your Honor.

13 THE COURT: Granted.

14 (Proceedings were concluded.)  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
DEPARTMENT NW 2 HON. DAVID A. HOROWITZ, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

VICTOR MANUEL HORTIZ,

Defendant.

NO. A-146105

REPORTER'S  
CERTIFICATE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, ALEXANDRIA WALSH, Official Reporter of the  
Superior Court of the State of California, for the County of  
Los Angeles, do hereby certify that the foregoing is a true  
and correct transcript of the proceedings held at the time of  
pronouncing sentence; that the views and recommendations of  
the court, if any, were contained therein, pursuant to Section  
1203.01 of the Penal Code.

Dated this 6th day of July, 1987.

/s/ Alexandria Walsh  
Official Reporter

CSB 24419

EXHIBIT "4"



3 PCE

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

NWR

CLERK: MAY 21 4 33 PM  
HONORABLE: DAVID HOROWITZ  
JUDGE: JUDGE MICHAEL

DEPT. 1  
ASSOCIATE CLERK  
F. J. ALSH

CASE NO. A145195

Marked for Court Report (if required)  
Court Report for People  
DEPUTY DISTRICT ATTORNEY  
Court Report for Defendant

PEOPLE OF THE STATE OF CALIFORNIA  
VS  
01 MONTEZ VICTOR M. MEIN

COUNTY CLERK

01015

NATURE OF PROCEEDINGS: PLS

IS WORKING AS THE ENGLISH

12-15-08

CRIMINAL PROCEEDING (RETURNED/RESUMED)

INTERMITTENT

DEFENDANT ORDERED DELIVERED TO DEPARTMENT OF CORRECTIONS PER SECTION 1201.01 PENAL CODE

MOTION, PROBATION AND PRESENTING CONTINUED TO

SUPPLEMENTAL PROBATION REPORT/PROGRESS REPORT ORDERED

PROBATION DENIED, SENTENCE IS IMPOSED AS FOLLOWS:

IMPRISONED IN STATE PRISON FOR

TERM: PRESENTING

17 YEARS TO LIFE

CONVICTED OF THE

TERM OF

17 YEARS TO LIFE

COMMITTED TO CALIFORNIA YOUTH AUTHORITY. THE TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WOULD  
HAVE BEEN SENTENCED AS A RESULT OF SECTION 1170.01 PENAL CODE IS YEARS.  
IMPRISONED IN LOS ANGELES COUNTY JAIL FOR TERM OF YEARS.

FINED IN SUM OF

PLUS ASSESSMENTS TO BE PAID TO COUNTY CLERK

SENTENCE IS SUSPENDED

PROCEEDINGS SUSPENDED

PROBATION GRANTED PERIOD OF

YEARS (SEE CONDITIONS LISTED BELOW)

PROBATION TO BE WITHOUT FORMAL SUPERVISION

SPEND FIRST

IN COUNTY JAIL

ROAD CAMP OR HONOR FARM RECOMMENDATION

WORK PROGRAM RECOMMENDED

NOT TO BE ELIGIBLE FOR COUNTY PAROLE

PAY FINE OF \$500.00

PLUS FEE OF \$100.00 PER DAY TO SECTION 1170.01 PENAL CODE PLUS ADDITIONAL

FINE OF \$500.00 PER DAY TO SECTION 1170.01 PENAL CODE PLUS ADDITIONAL

ASSESSMENT TO BE PAID TO COUNTY CLERK PROBATION OFFICER IN SUCH AMOUNT AND MANNER AS HE SHALL PRESCRIBE

MINIMUM PAYMENT OF FINE/RESTITUTION TO BE \$50.00 PER WEEK

MAKE RESTITUTION THROUGH PROBATION OFFICER IN SUCH AMOUNT AND MANNER AS HE SHALL PRESCRIBE

TOTAL AMOUNT OF RESTITUTION TO INCLUDE IN SERVICE CHARGES AS AUTHORIZED BY SECTION 1170.01 PENAL CODE

CONSUME ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF TENOR OF SALE

NOT USE OR POSSESS ANY FIREARMS, DANGEROUS OR RESTRICTED WEAPONS OR ASSOCIATED PARAPHERNALIA EXCEPT

WITH VALID PRESCRIPTION AND STAY AWAY FROM PLACES WHERE USERS CONGREGATE

NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE HARDENED OR DRUG USERS OR SELLERS

SUBMIT TO PROBATION ANY URINALYSIS TEST AS DIRECTED BY THE PROBATION OFFICER

HAVE NO BANK ACCOUNTS IN POSSESSION, NOT WRITE ANY PORTION OF ANY CHECKS, NOT HAVE BANK ACCOUNT

WHICH YOU MAY DRAW CHECKS

NOT GAMBLE OR ENGAGE IN BOOKMAKING ACTIVITIES OR HAVE PARAPHERNALIA THEREOF IN POSSESSION AND

BE PRESENT IN PLACES WHERE GAMBLING OR BOOKMAKING IS CONDUCTED

NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE HARDENED OR DRUG USERS OR SELLERS

COOPERATE WITH PROBATION OFFICER IN A PLAN FOR

SUPPORT DEFENDANT AS DIRECTED BY PROBATION OFFICER

KEEP AND MAINTAIN TRAINING, SCHOOLING OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER

MAINTAIN RESIDENCE AS APPROVED BY PROBATION OFFICER

SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLE

NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND REQUIRED

NOT OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS

SURRENDER WEAPON AND PERMIT TO SEARCH OR SEIZE AT ANY TIME OF THE DAY OR NIGHT BY ANY LAW EN

FORCE OFFICER WITH OR WITHOUT A WARRANT

OBEY ALL LAWS, ORDINANCES AND REGULATIONS OF THE JUDICIAL DEPARTMENT AND OF THE COURT

DEFENDANT TO BE CONFINED FOR 60 DAYS IN COUNTY JAIL

INTERMITTENT COUNTS TO RUN CONSECUTIVELY AND CURRENTLY WITH

BY ORDER OF PROBATION GRANTED TO

BY ORDER OF PEOPLE'S COURT

COURT AGES DEFENDANT OF HIS APPEALABLE RIGHTS

FURTHER ORDER AS FOLLOWS ADDITIONAL CONDITIONS OF PROBATION

DEFENDANT TO BE CONFINED FOR 60 DAYS IN COUNTY JAIL  
INTERMITTENT COUNTS TO RUN CONSECUTIVELY AND CURRENTLY WITH  
BY ORDER OF PROBATION GRANTED TO  
BY ORDER OF PEOPLE'S COURT  
COURT AGES DEFENDANT OF HIS APPEALABLE RIGHTS  
FURTHER ORDER AS FOLLOWS ADDITIONAL CONDITIONS OF PROBATION

SHEET IS CHECKED TO ALIM DEFENDANT

PHONE CALLS AT DEFENDANT'S HOME

DEFENDANT MUST APPEAR WITHOUT DELAY SUFFICIENT EXCUSE

SUM. FORFEITED

OUR REVOKED

DEFENDANT MUST APPEAR WITHIN 10 DAYS WITHOUT DELAY SUFFICIENT EXCUSE

NO DELAY

NO DELAY AT 1

EXHIBIT "5"



COURT COPY

302

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

PROBATION OFFICERS REPORT

REPORT SEQUENCE # 1

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff

VICTOR MONTEZ,

Defendant

DEPT. NW-E	CITY BURBANK	JUDGE HORNWITZ
HEARING 4-23-82	CALL NO. A-1381745	COURT CASE NO. A-146105
DPC GREISHORE	ALL OF FICHE 1	
FOURTH (LAST) 131 NORTH BALDWIN OXNARD, CA (NO TELEPHONE)	DATE RELEASED APR 22 1982	PRISON NO. V-

VICTOR MANUEL MARQUEZ-MONTEZ

CHARGES WITH THE CRIMES OF

CT. 1: 187 PC (MURDER) WITH USE ALLEGATION PURSUANT TO PENAL CODE 12022(A) AND  
 PENAL CODE SECTION 12022.5; CT. 11: 211 PC (ARMED ROBBERY) WITH USE ALLEGATION  
 PURSUANT TO PENAL CODE SECTION 12022(A) AND PENAL CODE SECTION 12022.5;

CONVICTIONS OF THE CRIMES OF

CT. 1: 187 PC WITH USE ALLEGATION PURSUANT TO SECTION 12022.5  
 CT. 111: 664/209 PC WITH ALLEGATIONS AND ALLEGATIONS OF CT. 1  
 CONTINUED TO PLS HEARING. CT. 11: 211 PC DISMISSED AT \*\*

☐ Pre-conviction invest (1313 C.C.P.)

☐ Drug Diversion Invest (1000.1 (a) P.C.)

TEMPERARY CARES

DENISE MONTEZ

DISPOSITION

PLS HEARING 4-23-82

PERSONAL HISTORY

AGE 28	BIRTHDATE 7-6-53	RACE MEX/AM	FORMAL EDUCATION 15 YEARS	AGE LEFT SCHOOL 16
MARRIED STATUS MARRIED	HOME INCLUDES WIFE, THREE CHILDREN	INCOME PER MONTH \$	WHERE EMPLOYED NOT	NO. OF DEPENDENTS FOUR
LAST FULL NAME GORD	AGE TO STATE 1956-1957	AGE TO COUNTY NOT	ARMED MILITARY SERVICE U.S. ARMY	TYPE OF DISCHARGE HONORABLE

CT. 111: 664/209 PC (ATTEMPTED KIDNAPPING WITH INTENT TO COMMIT  
 ROBBERY) PURSUANT TO PENAL CODE SECTION 12022(A) AND PENAL CODE  
 SECTION 12022.5.

\*\* APPELLATE COURT HEARING OF 11-25-80.

(AS SUPPLIED BY DEFENDANT AND CONFIRMED BY WIFE.)

DEFENDANT IS THE FOURTH OF NINE CHILDREN BORN TO  
 MANUEL ALVAREZ MONTEZ AND PENYOLA MARQUEZ MONTEZ IN EL PASO, TEXAS.  
 HE WAS RAISED BY HIS PARENTS IN OXNARD, CALIFORNIA. THE DEFENDANT  
 AND HIS FAMILY CAME TO CALIFORNIA WHEN HE WAS APPROXIMATELY THREE OR

JUL 15 2012 11:16 AM  
1 FOUR YEARS OF AGE AND SETTLED IN CATICUY, CALIFORNIA. THEY  
2 SUBSEQUENTLY MOVED TO OXNARD, CALIFORNIA. THE DEFENDANT HAS NEVER  
3 LIVED IN LOS ANGELES COUNTY.

4 THE DEFENDANT, HIS WIFE, TWO CHILDREN AND A STEPSON,  
5 LAST RESIDED AT THE HOME OF THE DEFENDANT'S PARENTS IN OXNARD,  
6 CALIFORNIA FOR APPROXIMATELY TWO MONTHS. UPON RELEASE, THE DEFENDANT  
7 EXPECTS TO EITHER RETURN TO OXNARD OR LIVE IN SAN BERNADINO.

8 THE DEFENDANT'S PARENTS WERE DIVORCED IN 1973 OR 1974.  
9 THE FATHER IS A MECHANIC-WELDER AND HAS NOT REMARRIED. THE MOTHER'S  
10 OCCUPATION IS UNKNOWN. SHE REMARRIED IN 1980 TO A MR. COLON.

11 THE DEFENDANT ATTENDED CHANNEL ISLAND HIGH SCHOOL FOR  
12 APPROXIMATELY ONE YEAR AND DROPPED OUT AT THE AGE OF 16 YEARS WHEN HE  
13 ENROLLED IN THE JOB CORPS FOR APPROXIMATELY 11 MONTHS STUDYING HEAVY  
14 EQUIPMENT OPERATOR. HE LEFT THE JOB CORPS IN NOVEMBER OF 1969.  
15 WHILE IN THE NEW MEXICO STATE PENITENTIARY IN 1977 OR 1978, THE  
16 DEFENDANT OBTAINED HIS GENERAL EDUCATION DIPLOMA THROUGH THE DIVISION  
17 OF VOCATIONAL REHABILITATION. HE RECEIVED A CERTIFICATE FOR WELDING.  
18 HE APPEARS TO BE OF AVERAGE INTELLIGENCE.

19 THE DEFENDANT CO-HABITATED WITH LORENA R. MOLINA IN  
20 NEW MEXICO FROM APRIL OF 1975 UNTIL JUNE OF 1976 WHEN HE WAS COMMITTED  
21 TO THE NEW MEXICO STATE PENITENTIARY. HE RETURNED TO THE HOME OF  
22 MILCO MOLINA IN APRIL OF 1978 AND REMAINED THERE UNTIL FEBRUARY OF 1979.  
23 THE DEFENDANT CO-HABITATED WITH DENISE GARCIA FROM MAY OF 1979 UNTIL

1 THEY MARRIED IN APRIL OF 1980. HE ASSUMED RESPONSIBILITY FOR HIS  
2 WIFE'S SON, WHO WAS THEN ONE YEAR OF AGE. THERE WERE TWO DAUGHTERS  
3 BORN OF THIS UNION; ONE ON FEBRUARY 9, 1980, AND THE SECOND IN  
4 JANUARY OF 1981.

5 THE DEFENDANT'S 27-YEAR-OLD BROTHER, ANASTACIO,  
6 HAD ONE LAW ENFORCEMENT CONTACT AS A JUVENILE FOR CURFEW AND MALICIOUS  
7 MISCHIEF.

8 THE DEFENDANT WAS LAST EMPLOYED AS A ROOFER FOR  
9 SOUTHERN CALIFORNIA ROOFING COMPANY IN DOWNEY FROM JUNE OF 1980 UNTIL  
10 MID-JULY OF 1980. HE INDICATES THE JOB WAS THEN FINISHED AND HIS  
11 SALARY WAS \$11.90 PER HOUR. THE DEFENDANT INDICATES THERE HAS BEEN  
12 NO OTHER EMPLOYMENT. HE PLANS TO RETURN TO ROOFING OR WELDING UPON  
13 HIS RELEASE.

14 THE DEFENDANT ENLISTED IN THE UNITED STATES ARMY ON  
15 SEPTEMBER 8, 1970, ACHIEVED A RATING OF E-2, AND WAS HONORABLY  
16 DISCHARGED ON SEPTEMBER 18, 1972. HE WAS A PARATROOPER IN THE  
17 SPECIAL FORCES.

18 FINANCIAL INFORMATION:

19 THE DEFENDANT LAST PAID RENT OF \$75 PER MONTH. HE  
20 OWNS A 1952 GMC, PICK UP, VALUED AT \$700. HE INDICATES THE CITY  
21 TOWED THE TRUCK AWAY AND ITS WHEREABOUTS ARE NOW UNKNOWN. HIS  
22 FINANCIAL STATUS IS CURRENTLY POOR.  
23



SUBSTANCE ABUSE:

THE DEFENDANT FIRST BEGAN SMOKING MARIJUANA AT THE AGE OF 13 YEARS UTILIZING IT TWO TO THREE TIMES PER WEEK. AT THE AGE OF 13, HE BEGAN SNOOTING HEROIN ON WEEKENDS AT A COST OF FIVE DOLLARS PER CAPSULE. THIS HABIT SUBSEQUENTLY PROGRESSED UNTIL HIS DAILY USE AMOUNTED TO \$200 PER DAY. AT THE AGE OF 15, HE BEGAN TAKING VALIUMS "WHENEVER THERE WAS NO STUFF". THE DEFENDANT TOOK QUAALUDES ONE TIME ONLY AT THE AGE OF 19 YEARS. HE SUPPORTED HIS HABIT THROUGH ODD JOBS AND BURGLARIES. THE DEFENDANT HAS NEVER OVERDOSED.

FROM MAY OF 1979 THROUGH MAY OF 1980, THE DEFENDANT WAS IN THE VICTORY OUT REACH PROGRAM LOCATED ON STAR ROUTE 27, HELENDALE, CALIFORNIA. THE MAIN OFFICE IS LOCATED AT 747 MOUNT VERNON AVENUE IN SAN BERNADINO.

GANG ACTIVITY:

THE DEFENDANT DENIES ANY GANG AFFILIATIONS.

PRIOR RECORD:SOURCES OF INFORMATION:

DEPARTMENT OF JUSTICE (3-24-82), CII (4-16-82),

DEFENDANT.

JUVENILE HISTORY:

AGE 9

OXNARD PD - MALICIOUS MISCHIEF, CLR NY

AGE 13

OXNARD PD - MARKS ON ARM.

(DEFENDANT SAYS MATTER DISMISSED AS HE STATED HE WAS GOING INTO THE JOE CORPS.)

ADULT HISTORY:

3-5-73 VENTURA SO - 459 PC (BURGLARY) - 4-26-73, DISMISSED IN FURTHERANCE OF JUSTICE.

4-13-73 VENTURA SO - 11550 H&S (UNDER INFLUENCE CONTROLLED SUBSTANCE) - 11364 H&S (POSSESSION CONTROLLED SUBSTANCE PARAPHEMIALIA) - 459 PC (BURGLARY). 1-7-74, CONVICTED OF 11550 H&S (POSSESSION MARIJUANA) - CYA COMMITMENT.

4-17-73 VENTURA SO - 459 PC (BURGLARY) - DISMISSED. 4-26-73, PG, 602.5 PC (ENTERING NON-COMMERCIAL DWELLING) - ONE YEAR SUMMARY PROBATION.

10-19-73 VENTURA SO - 11360 H&S (SELL OR TRANSPORT MARIJUANA/HASH) FTA.

1-16-74 VENTURA SO - 242 PC (BATTERY) -

(DEFENDANT STATES THE INCIDENT HAPPENED WHILE IN COUNTY JAIL AND MATTER WAS DISMISSED.)

DATE UNKNOWN NEW MEXICO - 459 PC (THEFT FROM MOTOR VEHICLE) - COMMITTED TO NEW MEXICO STATE PENITENTIARY, RELEASED 4-22-78.

(DEFENDANT STATES HE TURNED HIMSELF IN AS HE WAS AWARE OF A BENCH WARRANT HAVING BEEN ISSUED. HE SAYS HE WAS DISHONORABLY DISCHARGED FROM THE CALIFORNIA YOUTH AUTHORITY JURISDICTION ON JUNE 3, 1977 WHEN COMMITTED ON THIS CHARGE.)

PRESENT OFFENSE:

DEFENDANT WAS ARRESTED ON AUGUST 11, 1980 AT 12:00 NOON BY THE LOS ANGELES POLICE DEPARTMENT WITH THE ASSISTANCE OF THE OXNARD POLICE DEPARTMENT AT THE PLAZA MARINA HOTEL, LOCATED AT 711 WEST HUENEME, OXNARD AND BOOKED FOR 187 OF THE PENAL CODE (MURDER). AT THE TIME OF THE ARREST, THERE WAS AN OUTSTANDING OXNARD WARRANT

1 NUMBER 043334MAN01 WITH BAIL SET AT \$75. THERE WAS NO BAIL SET ON  
 2 HIS CURRENT ARREST. HE WAS CHARGED ON THE INFORMATION WITH COUNT  
 3 ONE, 187 PENAL CODE (MURDER) DURING THE COMMISSION OF A ROBBERY AND  
 4 KIDNAPPING PURSUANT TO PENAL CODE SECTION 190.2(A)(17); COUNT TWO,  
 5 211 PENAL CODE (ROBBERY); COUNTS THREE, 664/209 PENAL CODE (ATTEMPTED  
 6 KIDNAPPING TO COMMIT ROBBERY), ALL THREE COUNTS ALLEGED THE USE OF  
 7 A FIREARM PURSUANT TO SECTION 12022.5 OF THE PENAL CODE AND PURSUANT  
 8 TO SECTION 12022(A) OF THE PENAL CODE. IT WAS ALSO ALLEGED, IN ALL  
 9 THREE COUNTS, DEFENDANT INFLECTED GREAT BODILY INJURY AS DEFINED IN  
 10 SECTION 12022.7 OF THE PENAL CODE. COUNT TWO WAS DISMISSED ON  
 11 OCTOBER 1, 1980 AND UPHOLD BY THE APPELLATE COURT ON NOVEMBER 25, 1980.  
 12 ON MARCH 26, 1982, THE DEFENDANT PLED GUILTY TO COUNT ONE WITH THE  
 13 USE ALLEGATION PURSUANT TO PENAL CODE SECTION 12022.5. REMAINING  
 14 COUNTS AND ALLEGATIONS WERE CONTINUED TO THE PROBATION AND SENTENCING  
 15 HEARING.

16 **FACTS**: BASED ON THE ARREST REPORT, A WITNESS, MARK LABASH,  
 17 INFORMED LOS ANGELES COUNTY SHERIFFS THAT HE HAD OBSERVED TWO MALE  
 18 SUSPECTS ON AUGUST 10, 1980 AT 1:48 A.M. DRAGGING A BODY TO THE  
 19 SHOULDER OF THE VENTURA FREEWAY WEST OF VALLEY CIRCLE OFF RAMP. AT  
 20 4:00 A.M. ON THE SAME DATE, DEPUTIES OBSERVED THE VICTIM WITH A  
 21 GUNSHOT WOUND TO HIS UPPER TORSO AND LYING IN A SUPINE POSITION ON  
 22 THE FREEWAY SHOULDER. DEATH WAS INDICATED AS OCCURRING AT 2:48 A.M.  
 23 THE VICTIM'S PANTS WERE OPEN AND PARTIALLY DOWN, THE ZIPPER WAS

1 PARTIALLY BROKEN AND THE TOP BUTTON WAS PULLED OFF. A BULLET HOLE  
2 WAS OBSERVED BEHIND HIS RIGHT EAR AND A GUITAR PICK WAS STUCK TO  
3 HIS LEFT CHEEK WITH BLOOD. MRS. IRMA CEBALLOS (22), 237 LARK STREET,  
4 OXNARD, CALIFORNIA, INFORMED OFFICERS AT THE LOS ANGELES POLICE  
5 DEPARTMENT, WEST VALLEY STATION, ON AUGUST 10, 1980 THAT AT  
6 APPROXIMATELY 10:30 P.M. ON AUGUST 9, 1980, SHE AND TWO ASSOCIATES,  
7 VICTOR MONTEZ, AND DENISE MONTEZ, HAD BEEN VISITING SAN BERNARDINO.  
8 AND HAD STOPPED IN SAN FERNANDO VALLEY FOR A PIZZA ON THEIR RETURN  
9 TRIP. WHEN THE THREE ATTEMPTED TO START THEIR BROWN STATION WAGON  
10 AFTERWARDS, IT FAILED TO START AND THEY DECIDED TO HITCHHIKE ON THE  
11 VENTURA FREEWAY. THEY FIRST APPROACHED AN UNKNOWN MALE APPROXIMATELY  
12 ONE-HALF HOUR LATER. SUBSEQUENTLY, IT WAS AGREED THAT THE WITNESS  
13 AND MRS. MONTEZ WOULD APPEAR AS TWO FEMALES STRANDED ON THE FREEWAY  
14 WHILE MR. MONTEZ WOULD APPROACH ANY MOTORIST WHO STOPPED AND EXHIBIT  
15 A FIREARM HE CARRIED IN HIS WAISTBAND. THE DEFENDANT HID IN A BUSH  
16 AREA WHILE THE WOMEN HITCHHIKED. THE VICTIM APPROACHED IN A SILVER  
17 DATSUN, STATION WAGON, LICENSE NUMBER 82BYHP, CONVERSED WITH  
18 MRS. MONTEZ, THEN ALLOWED THEM TO ENTER HIS VEHICLE. THE WITNESS  
19 ENTERED THE FRONT SEAT AND MRS. MONTEZ ENTERED THE REAR SEAT WHILE  
20 BECKONING TO THE DEFENDANT WHO WAS HIDING IN THE BUSHES. THE  
21 DEFENDANT RAN TO THE VEHICLE BRANDISHING A SMALL CALIBER FIREARM  
22 AND ENTERED THE REAR SEAT OF THE VEHICLE. HE THEN POINTED THE  
23 WEAPON AT THE REAR PORTION OF THE VICTIM'S HEAD AND TOLD HIM TO TAKE

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1 THEM TO OXNARD OR HE WOULD KILL HIM. THE DEFENDANT FIRED ONE ROUND,  
2 WITHOUT WARNING, STRIKING THE VICTIM APPROXIMATELY IN THE LOWER RIGHT  
3 OF HIS HEAD. THE VICTIM FELL FORWARD. THE DEFENDANT EXITED THE  
4 REAR PASSENGER DOOR AND OPENED UP THE FRONT PASSENGER DOOR. THE  
5 DEFENDANT THEN DROO THE VICTIM'S BODY ACROSS THE FRONT SEATS FROM  
6 THE DRIVER'S SIDE AND SECRETED THE BODY BENEATH AN OVERHANGING TREE  
7 AND SHRUB AREA. THE WITNESS THEN OBSERVED THE DEFENDANT GOING THROUGH  
8 THE VICTIM'S GARMENTS BUT WAS UNSURE OF WHAT WAS REMOVED. THE  
9 WITNESS AND MRS. MONTEZ HAD ALSO EXITED THE VEHICLE. THE DEFENDANT  
10 THEN INSTRUCTED THE WITNESS TO RE-ENTER THE VEHICLE AND TOLD HIS  
11 WIFE TO WEAR GLOVES SO AS NOT TO LEAVE HER FINGERPRINTS ON THE VEHICLE.  
12 HE THEN ENTERED THE REAR SEAT AND INSTRUCTED HIS WIFE TO DRIVE THE  
13 VEHICLE TO 456 CHANNEL ISLAND BOULEVARD IN OXNARD. UPON ARRIVAL AT  
14 THE RESIDENCE WHICH IS OCCUPIED BY THERESA RAMIREZ, MRS. MONTEZ  
15 REMOVED CLOTHING WHICH HAD BELONGED TO THE VICTIM AND ATTEMPTED TO  
16 WASH THEM. THE WITNESS WAS UPSET AND THE DEFENDANT COMFORTED HER  
17 INDICATING THEY COULD NOT BE IDENTIFIED AND THERE WAS NO WAY TO  
18 TRACE THEIR LOCATION. WHEN THE WITNESS SUGGESTED THEY TURN THEMSELVES  
19 IN, THE DEFENDANT THREATENED HER WITH ACTS OF VIOLENCE AND STATED SHE  
20 WOULD BE KILLED IF SHE CONTACTED THE POLICE. THE WITNESS THEN  
21 STATED THE WEAPON HAD BEEN SOLD TO AN UNKNOWN FEMALE IN THE OXNARD  
22 AREA AND A GUITAR, WHICH HAD BEEN TAKEN FROM THE VICTIM'S VEHICLE,  
23 WAS ALSO SOLD TO SOMEONE IN THE OXNARD AREA. THE WITNESS THEN

Con +



1 WILLINGLY ACCOMPANIED LOS ANGELES POLICE DEPARTMENT DETECTIVES TO THE  
2 OXNARD POLICE STATION AND IDENTIFIED A PHOTO OF THE DEFENDANT. AT  
3 APPROXIMATELY 12:10 P.M. ON AUGUST 10, 1980, THE WITNESS IDENTIFIED  
4 THE VICTIM'S VEHICLE AT 149 ELIZA COURT IN THE CITY OF OXNARD.  
5 THERESA RAMIREZ LATER INFORMED OFFICERS THAT MR. AND MRS. MONTEZ  
6 HAD LEFT HER RESIDENCE AT APPROXIMATELY 4:00 P.M. ON AUGUST 10, 1980.  
7 MRS. RAMIREZ INFORMED OFFICERS THAT SHE HAD ORDERED THE DEFENDANT  
8 AND HIS WIFE OUT OF HER HOME AS THEY WERE ATTEMPTING TO SELL STOLEN  
9 GOODS AND STATED THEY COULD BE LOCATED AT THE PLAZA MARINA HOTEL.  
10 LOS ANGELES POLICE OFFICERS WENT TO THAT LOCATION ACCOMPANIED BY  
11 OXNARD POLICE OFFICERS AND WERE INFORMED THE DEFENDANT AND HIS WIFE  
12 WERE OCCUPYING APARTMENT NUMBER 25. THE DEFENDANT ANSWERED THE DOOR  
13 TO APARTMENT 25 AND A REVOLVER WAS OBSERVED ON THE NIGHTSTAND. BOTH  
14 THE DEFENDANT AND HIS WIFE WERE THEN ARRESTED. FND

15 DEFENDANT'S STATEMENT:

16 THE DEFENDANT HAS NOT SUBMITTED A WRITTEN STATEMENT.  
17 ORALLY, HE STATES THAT HE, HIS WIFE, AND IRMA CEDALLOS WERE LOOKING  
18 FOR A RIDE IN THE SAN FERNANDO VALLEY WHERE HE HAD DRIVEN HIS CAR  
19 AND IT HAD BROKEN DOWN. THEY WERE EN ROUTE TO OXNARD FROM  
20 SAN BERNARDINO. HE SAW A GUY PARKED AT A GAS STATION AND OFFERED  
21 HIM \$20 FOR A RIDE, BUT THE PERSON HAD NO GAS. THEY THEN WALKED ON  
22 TO THE 101 FREEWAY AND THE WOMEN WERE TOLD TO ATTEMPT TO GET A RIDE  
23 WHILE THE DEFENDANT HID. HE STATED HE WOULD CATCH THEM LATER. A

1 CAR STOPPED AND OFFERED THEM A RIDE. THE DEFENDANT THEN CHANGED HIS  
2 MIND, RAN TO THE CAR, AND PUSHED HIS WIFE OUT OF THE WAY, KNOCKING  
3 HER DOWN. THE VICTIM WAS SCARED AND THE DEFENDANT TOLD HIM THAT  
4 "NOTHING WOULD HAPPEN TO HIM. JUST GIVE ME A RIDE." THE VICTIM  
5 AGREED AND THE DEFENDANT LET HIM GO. HE STATES HE HAD A GUN IN HIS  
6 HAND AND, WHEN THE VICTIM ADJUSTED HIMSELF IN HIS SEAT, HE ACCIDENTLY  
7 HIT THE GUN WHICH WENT OFF AND KILLED HIM. THE DEFENDANT TOOK THE  
8 VICTIM OUT OF THE CAR, PUT HIS BODY IN THE BUSHES, RE-ENTERED THE  
9 VEHICLE AND DROVE TO OXNARD. HE DENIES HAVING GONE THROUGH THE  
10 VICTIM'S POCKETS AS HE STATES HE HAD NO INTENTION OF ROBBING OR  
11 HURTING ANYONE.

12 INTERESTED PARTIES:

13 CYNTHIA STEWART, VICTIM'S SISTER, INDICATES THE  
14 VICTIM WAS SIX FEET TWO INCHES, APPROXIMATELY 170 POUNDS, AGE 33  
15 YEARS, SINGLE WITH NO DEPENDENTS. SHE STATES THAT IN 1976 HE HAD  
16 AN ATTACK IN HIS LEFT EYE OF HISTOPLASMOYSIS WHICH IS AN EYE DISEASE  
17 AND CAUSES BLINDNESS. SHE INDICATED THE ILLNESS CLOGS ONE'S VISION  
18 AND THAT THE DOCTOR HAD STATED THIS WAS THE WORST CASE EVER SEEN.  
19 SHE STATES HER BROTHER WAS RETURNING TO ALTADENA FROM BAND PRACTICE  
20 IN WOODLAND HILLS. THE CAR WAS SUBSEQUENTLY RETURNED, BUT WAS TOTALLY  
21 STRIPPED. MISS STEWART RECEIVED A CALL FROM THE OXNARD POLICE  
22 DEPARTMENT INDICATING HER BROTHER'S CAR HAD BEEN FOUND; HOWEVER, SHE  
23 DID NOT KNOW AT THE TIME THAT THE HOMICIDE VICTIM WAS ACTUALLY HER

1 BROTHER. SHE STATES THERE WAS INSURANCE WHICH COVERED HER BROTHER'S  
2 FUNERAL EXPENSES. ALSO, MISS STEWART WAS INFORMED BY THE POLICE  
3 DEPARTMENT OF HER ELIGIBILITY FOR VICTIM'S COMPENSATION.

4 EVALUATION:

5 THE DEFENDANT, WHO INDICATES HIS ONLY EMPLOYMENT WAS  
6 FOR A PERIOD OF ONE AND ONE-HALF MONTHS SINCE HIS RELEASE FROM THE  
7 NEW MEXICO STATE PENITENTIARY IN 1978, HAS HAD THE ADVANTAGE OF  
8 BEING THE PRODUCT OF AN INTACT FAMILY ENVIRONMENT UNTIL THE AGE OF  
9 20 OR 21 YEARS. HOWEVER, HE WAS COMMITTED TO THE CALIFORNIA YOUTH  
10 AUTHORITY SOON AFTER HIS 21ST BIRTHDAY FOR POSSESSION. HIS ONLY  
11 OTHER CONTACT WITH LAW ENFORCEMENT HAS BEEN OF A MODERATE NATURE.  
12 HE COMES FROM A LARGE FAMILY AND NO OTHER MEMBERS ARE INDICATED AS  
13 HAVING BEEN ARRESTED. THE DEFENDANT HAS OBTAINED THE EQUIVALENT OF  
14 A HIGH SCHOOL DIPLOMA AND HAS HAD TRAINING AS A HEAVY EQUIPMENT  
15 OPERATOR AND TRAINING IN WELDING, YET NO ATTEMPTS WERE MADE TO  
16 OBTAIN CONTINUAL EMPLOYMENT. THE DEFENDANT HAS BEEN HEAVILY INVOLVED  
17 IN THE USE OF NARCOTICS AND HAS BEEN ADDICTED TO SAME FOR THE  
18 MAJORITY OF HIS LIFETIME. HE INDICATES REMORSE OVER THIS CURRENT  
19 MATTER AND DENIES ANY INTENT OF HARM TO ANYONE. THE VICTIM WAS A  
20 YOUNG MAN WITH NO DEPENDENTS; HOWEVER, IT APPEARS HE MAY HAVE HAD A  
21 VISION PROBLEM AND POSSIBLY NOT OBSERVED THE DEFENDANT APPROACHING  
22 HIS VEHICLE.

THIS WAS A CRIME OF A VIOLENT NATURE AND THE DEFENDANT'S



STATEMENT OF FEELING REMORSE IS IN DIRECT CONTRADICTION TO STATEMENTS  
OBTAINED FROM THE ONLY EYEWITNESSES TO THE INCIDENT.

SENTENCING CONSIDERATIONS:

DUE TO THE CHARGE OF MURDER WITHIN THE USE ALLEGATION  
HAVING BEEN FOUND TRUE, THE DEFENDANT IS INELIGIBLE FOR PROBATION.  
PURSUANT TO SECTION 1203.06 OF THE PENAL CODE AND 1203.075 OF THE  
PENAL CODE.

CIRCUMSTANCES IN AGGRAVATION:

1. PRE-PLANNED USE OF A FIREARM.
2. A VIOLENT CRIME WHICH CAUSED THE DEATH TO THE VICTIM.
3. DEFENDANT THREATENED THE VICTIM WITH A FIREARM.
4. DEFENDANT ATTEMPTED TO CONCEAL THE VICTIM FROM SIGHT.
5. THE DEFENDANT TAMPERED WITH EVIDENCE USEFUL IN THE INVESTIGATION OF THIS CRIME.

CIRCUMSTANCES IN MITIGATION:

1. DEFENDANT'S VEHICLE WAS INOPERATIVE.
2. THE DEFENDANT IS A HEROIN ADDICT.

CIRCUMSTANCES IN MITIGATION AND IN AGGRAVATION SUPPORT

A MOTION FOR THE HIGHER BASED TERM.

RECOMMENDATION:

IT IS RECOMMENDED THAT PROBATION BE DENIED AND THAT

1 DEFENDANT BE SENTENCED TO STATE PRISON WITH PRE-IMPRISONMENT OF  
2 619 DAYS.

3 RESPECTFULLY SUBMITTED,

4 KENNETH E. KIRKPATRICK  
5 PROBATION OFFICER

6 BY *Lynette Grismore*  
7 LYNETTE GRISMORE, DEPUTY  
8 EAST SAN FERNANDO VALLEY AREA OFFICE  
9 901-3979

10 READ AND APPROVED:

11 *Art Keener*  
12 ART KEENER, SDPO

13 (SUBMITTED 4-16-82)  
14 (TYPED 4-20-82)  
15 LG:BS (6)

16 I HAVE READ AND CONSIDERED  
17 THE FOREGOING REPORT OF THE  
18 PROBATION OFFICER.

19 *Karl H. Brown*  
20 JUDGE OF THE SUPERIOR COURT  
21  
22  
23



EXHIBIT "6"

**EXHIBIT 3**  
**Part 3 of 4**

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life )  
Term Parole Consideration )  
Hearing of: )

VICTOR MONTEZ )  
\_\_\_\_\_ )

CDC Number C-48215

**INMATE  
COPY**

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

MAY 31, 2006

10:57 A.M.

PANEL PRESENT:

JACK GARNER, Presiding Commissioner  
DENNIS SMITH, Deputy Commissioner

OTHERS PRESENT:

VICTOR MONTEZ, Inmate  
KATERA E. RUTLEDGE, Attorney for Inmate  
HERBERT LAPIN, Deputy District Attorney  
TWO CORRECTIONAL OFFICERS, Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

\_\_\_\_\_  
\_\_\_\_\_  
No  
Yes

See Review of Hearing  
Transcript Memorandum

Ramona Cota

Peters Shorthand Reporting

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P R O C E E D I N G S

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DEPUTY COMMISSIONER SMITH: We are on the record.

PRESIDING COMMISSIONER GARNER: All right, this is a Subsequent Parole Consideration Hearing for Victor Montez, M-O-N-T-E-Z, CDC number C-48215. The date today is May 31, 2006. It is now 10:57 a.m. and we are located at the Correctional Training Facility in Soledad. The inmate was received on June 1, 1982 from Los Angeles County. The offense is murder in the second degree with the use of a firearm, the case number is A Adam, 146105. Count number one is PC 187 with 12022.5. The term was 15 years to life plus 2 and the minimum eligible parole date was April 9, 1990. This hearing is going to be tape-recorded and for purposes of voice identification for the transcriber each of us at the table is going to be required to state our first name, last name, spelling the last name. When we get to you, Mr. Montez, if you'd also give us your CDC number, please.

INMATE MONTEZ: Yes sir.

PRESIDING COMMISSIONER GARNER: I'll start and go to my left. I'm Jack Garner, G-A-R-N-E-R, Commissioner.

DEPUTY COMMISSIONER SMITH: My name is



1 Dennis Smith, S-M-I-T-H, I'm a Deputy  
2 Commissioner.

3 DEPUTY DISTRICT ATTORNEY LAPIN: Herbert  
4 Lapin, L-A-P-I-N, Deputy District Attorney Los  
5 Angeles County.

6 ATTORNEY RUTLEDGE: Katera E. Rutledge,  
7 R-U-T-L-E-D-G-E, attorney for Mr. Montez.

8 INMATE MONTEZ: Victor M. Montez, M-O-N-  
9 T-E-Z, C number is C-48215.

10 PRESIDING COMMISSIONER GARNER: Okay,  
11 thank you. And for the record, we do have two  
12 correctional peace officers in the room for  
13 purposes of security. Okay, Ms. Rutledge and  
14 Mr. Montez, I have a BTB (sic) 1073. This is  
15 the reasonable accommodation associated with the  
16 Americans with Disabilities Act. And the form  
17 was signed over a year ago now, it was May 10,  
18 2005, and at that time you indicated you didn't  
19 need any help for your parole hearing. No  
20 disabilities were identified from the file and  
21 the fact that you had a GED was noted. Let me  
22 go ahead and ask you, has anything occurred  
23 since May 10 of 2005 that we need to provide an  
24 accommodation for today?

25 INMATE MONTEZ: As far as ADA? No.

26 PRESIDING COMMISSIONER GARNER: Your  
27 ability to see, hear, mobility, anything like

1 that.

2 INMATE MONTEZ: No, I'm all right.

3 PRESIDING COMMISSIONER GARNER: You're  
4 okay. Are you on any medications?

5 INMATE MONTEZ: No.

6 PRESIDING COMMISSIONER GARNER: No  
7 medications. So you're set to go?

8 INMATE MONTEZ: Ready to go, sir.

9 PRESIDING COMMISSIONER GARNER:

10 Ms. Rutledge?

11 ATTORNEY RUTLEDGE: Yes.

12 PRESIDING COMMISSIONER GARNER: All  
13 right, thank you. This hearing is being  
14 conducted pursuant to Penal Code Section 3041  
15 and 3042 and the rules and regulations of the  
16 Board of Parole Hearings governing parole  
17 consideration hearings for life inmates. The  
18 purpose of today's hearing is to consider your  
19 suitability for parole. In doing so we will  
20 consider the number and nature of the crimes you  
21 were committed for, your prior criminal and  
22 social history and your behavior and programming  
23 since your commitment. We have had the  
24 opportunity to review your Central File and your  
25 prior hearing transcript. You will be given the  
26 opportunity to correct or clarify the record.  
27 We will consider your progress since your

1 commitment and since your last hearing. Your  
2 updated counselor's report and psychological  
3 report will also be considered. And any change  
4 in your parole plans should be brought to our  
5 attention. We will reach a decision today and  
6 inform you whether or not we find you suitable  
7 for parole and the reasons for our decision. If  
8 you are found suitable for parole the length of  
9 your confinement will be explained to you. This  
10 hearing will be conducted in two phases. I will  
11 discuss with you the crime you were committed  
12 for, your prior criminal and social history,  
13 your parole plans and any letters of support or  
14 opposition that may be in the file.  
15 Commissioner Smith will discuss with you your  
16 progress since your commitment, your counselor's  
17 report and your psychological evaluation. Once  
18 that is concluded the Commissioners, the  
19 district attorney and your attorney will be  
20 given an opportunity to ask you questions. The  
21 questions from the district attorney will be  
22 asked through the Chair and you should direct  
23 your answers back to the panel. Before we  
24 recess for deliberations the district attorney,  
25 your attorney and you will be given an  
26 opportunity to make a final statement regarding  
27 your parole suitability. Your statement should

1 be directed to why you feel you are suitable for  
2 parole. We will then recess, clear the room and  
3 deliberate. Once we have completed our  
4 deliberations we will resume the hearing and  
5 announce our decision. The California Code of  
6 Regulations states regardless of time served a  
7 life inmate shall be found unsuitable for and  
8 denied parole if in the judgment of the panel  
9 the inmate would pose an unreasonable risk of  
10 danger to society if released from prison. Now  
11 Mr. Montez, you have certain rights. The rights  
12 included a timely notice to this hearing, the  
13 right to review your Central File and the right  
14 to present relevant documents. And I'd ask you  
15 at this time, have those rights been met?

16 INMATE MONTEZ: Yes.

17 PRESIDING COMMISSIONER GARNER: All  
18 right.

19 ATTORNEY RUTLEDGE: Yes.

20 PRESIDING COMMISSIONER GARNER: You also  
21 have a right to be heard by an impartial panel.  
22 Today the panel will be myself and Commissioner  
23 Smith. Any objection to the panel?

24 INMATE MONTEZ: No sir.

25 ATTORNEY RUTLEDGE: No.

26 PRESIDING COMMISSIONER GARNER: Thank  
27 you. You will receive a copy of our written

1 tentative decision today. The decision is  
2 subject to review by the Decision Review Unit  
3 and by the entire Board meeting as a body. It  
4 will become effective in 120 days and a copy of  
5 the tentative decision and a copy of the  
6 transcript will be sent to you. You might  
7 recall from previous Boards, in May 2004 the  
8 appeal procedure changed and now you are  
9 required to go through the courts if you want to  
10 appeal a panel decision.

11 INMATE MONTEZ: Yes sir.

12 PRESIDING COMMISSIONER GARNER: All  
13 right. And you are not required to admit your  
14 offense or discuss your offense if you do not  
15 wish to do so. However, this panel does accept  
16 as true the findings of the court and you are  
17 invited to discuss the facts and circumstances  
18 of the offense if you desire. The Board will  
19 review and consider any prior statements you  
20 have made regarding the offense in determining  
21 your suitability for parole. At this time I  
22 will ask Commissioner Smith if there is any  
23 confidential material in your C File and if  
24 we'll be using it today?

25 DEPUTY COMMISSIONER SMITH: There is  
26 confidential information but it will not be used  
27 this morning.



1           PRESIDING COMMISSIONER GARNER: All  
2 right, thank you. Counselors, I have the  
3 hearing checklist back, thank you. And do we  
4 have any additional documents to submit today?

5           ATTORNEY RUTLEDGE: Yes, we'll submit  
6 them when we get to the parole plans.

7           PRESIDING COMMISSIONER GARNER: All  
8 right. Any preliminary objections?

9           ATTORNEY RUTLEDGE: No. We only have --  
10 We just want to note for the record that  
11 Mr. Montez's hearing is eight months late.

12          PRESIDING COMMISSIONER GARNER: Okay.  
13 We'll note that and just tell you we're making  
14 progress. A year ago it might have been a year  
15 or more so we're getting down there. The  
16 backlog is getting chipped away at. And if we  
17 keep a full house of Commissioners we'll get to  
18 you a little more quickly.

19          INMATE MONTEZ: Yes.

20          DEPUTY COMMISSIONER SMITH: Counsel, if  
21 Mr. Montez does have letters regarding any  
22 parole plans, if I could see those now to review  
23 those so that Commissioner Garner will be able  
24 to address those as soon as we get to that  
25 point. I would appreciate that, thank you.

26          PRESIDING COMMISSIONER GARNER: Okay, and  
27 will Mr. Montez be speaking with us today?

1           ATTORNEY RUTLEDGE: He'll speak on all  
2 issues except the commitment offense.

3           PRESIDING COMMISSIONER GARNER: Okay, get  
4 you to raise your right hand, sir. Do you  
5 solemnly swear or affirm that the testimony you  
6 give at this hearing will be the truth, the  
7 whole truth and nothing but the truth?

8           INMATE MONTEZ: Yes I do.

9           PRESIDING COMMISSIONER GARNER: All  
10 right, thank you. Okay. Insomuch as Mr. Montez  
11 has elected not to speak about the commitment  
12 offense I'll go ahead and put into the record a  
13 summary of the commitment offense. And I am  
14 taking this from the June 2002 Board Report that  
15 was prepared by Correctional Counselor I initial  
16 M. Rubio, R-U-B-I-O.

17           "In that on August 9, 1980 Montez  
18 and two women, one of whom was  
19 his wife, were on their way to  
20 Oxnard when their vehicle became  
21 disabled. The two women began  
22 to hitchhike on the Ventura  
23 Freeway while Montez hid in the  
24 bushes. It was agreed that the  
25 two women would appear as two  
26 females stranded on the freeway  
27 while Montez would approach the

1. motorist who stopped and exhibit  
2. a firearm he carried in his  
3. waistband. The victim, Michael  
4. Stewart (phonetic) stopped for  
5. the women. The women entered  
6. the car and Ms. Montez entered  
7. the rear seat while beckoning to  
8. Montez who was still hiding in  
9. the bushes. He ran to the car  
10. and brandished a small caliber  
11. firearm and entered the rear  
12. seat of the car. He pointed the  
13. firearm at the back of the  
14. victim's head and told him to  
15. drive them to Oxnard or he would  
16. kill him. Montez then fired,  
17. striking and killing the victim.  
18. Montez exited the car, dragged  
19. the body from the car and  
20. secreted the body beneath an  
21. overhanging tree and shrubs.  
22. After leaving the body Montez,  
23. his wife and the other female  
24. companion drove the victim's car  
25. to Oxnard. Montez was arrested  
26. on August 11, 1980."

27. From the same report the version that was placed

1 into the report by the correctional counselor  
2 for the prisoner's version indicates that Montez  
3 basically concurs with the report.

4 "He states he never threatened the  
5 victim, in fact he offered the  
6 victim money for gas. He had the  
7 gun pointed at the time at the  
8 victim's head. Montez believes  
9 the gun fired when the victim  
10 adjusted himself in the car seat  
11 and his elbow knocked the gun.  
12 Montez states it was not his  
13 intention to kill the victim.  
14 Montez explained he was in  
15 possession of the gun, that it was  
16 stolen, as he was attempting to  
17 sell it to purchase drugs. He  
18 claimed he was not intoxicated or  
19 under the influence of drugs at  
20 the time of the offense. He  
21 claims he never threatened the  
22 witness with violence if she  
23 contacted the police as is  
24 alleged. His wife was  
25 subsequently convicted of  
26 accessory to murder and committed  
27 to CDC for a period of three

1 years, at which time she paroled.  
2 He has had no subsequent contact  
3 with her. He claims the purpose  
4 of stopping the vehicle on the  
5 freeway was simply to get a ride  
6 back to Oxnard.

7 DEPUTY COMMISSIONER SMITH: Commissioner,  
8 if I may. The two letters that were provided  
9 are both from the same individual, they are both  
10 employment letters. The most recent one is  
11 March, is dated March 1, 2006. That's in the  
12 Board packet so you will be addressing that when  
13 we get to that point. So I am going to return  
14 these two letters to counsel.

15 PRESIDING COMMISSIONER GARNER: Okay.  
16 Okay, thank you. All right, so far as a prior  
17 record. Reading from the same report it  
18 indicates that the first arrest was at the age  
19 of nine, arrested for malicious mischief,  
20 counseled and released. At the age of 13  
21 released for needle marks on his arm. According  
22 to Montez this matter was dismissed as you were  
23 going to go into the Job Corps. Both those  
24 correct, sir?

25 INMATE MONTEZ: Yes sir.

26 PRESIDING COMMISSIONER GARNER: All  
27 right, thank you. The first adult arrest



1 occurred at the age of 19, arrested for  
2 burglary, the case was dismissed. One month  
3 later arrested for under the influence of a  
4 controlled substance and possession of substance  
5 paraphernalia and burglary. And then on January  
6 7, 1974, convicted of possession of marijuana  
7 and sent to CYA. Arrest history is inclusive of  
8 burglary April 17 of '73 which was dismissed,  
9 entering a non-commercial dwelling. April 26,  
10 '73 for which you sustained one year probation.  
11 Selling and transporting marijuana October '73.  
12 FTA and a battery on January 16, '74, which was  
13 dismissed. Theft of a vehicle in February of  
14 1976. And the indication was that that one was  
15 in the state of New Mexico and you were  
16 sentenced to the New Mexico State Penitentiary,  
17 being paroled April 22, 1978. Is that the  
18 correct period of time?

19 INMATE MONTEZ: Yes.

20 PRESIDING COMMISSIONER GARNER: Okay.

21 INMATE MONTEZ: I believe it is.

22 PRESIDING COMMISSIONER GARNER: All  
23 right. And so far as the commitment offense,  
24 again we have that. That was August 11 in 1980.  
25 So far as your personal life. You were the  
26 fourth of eleven children born to your parents  
27 whose marriage remained intact until you were 20

1 years of age. Your parents, did they separate  
2 or divorce?

3 INMATE MONTEZ: My father has since  
4 deceased but my mother is still alive.

5 PRESIDING COMMISSIONER GARNER: Your  
6 mother is still alive. So when you were 20  
7 years of age, that's when your mother and father  
8 split up?

9 INMATE MONTEZ: Yes.

10 PRESIDING COMMISSIONER GARNER: And then  
11 he subsequently passed away?

12 INMATE MONTEZ: That was about the time,  
13 yes.

14 PRESIDING COMMISSIONER GARNER: All  
15 right. And your mother remarried in 1980. Is  
16 that correct?

17 INMATE MONTEZ: I believe so, yes.

18 PRESIDING COMMISSIONER GARNER: Okay.

19 DEPUTY COMMISSIONER SMITH: Mr. Montez,  
20 if I could ask you to move to the microphone  
21 just a little bit closer to you. That way you  
22 don't have to lean forward and I can make sure I  
23 can get your voice on the tape.

24 INMATE MONTEZ: Okay.

25 DEPUTY COMMISSIONER SMITH: Thank you.

26 INMATE MONTEZ: Sorry.

27 PRESIDING COMMISSIONER GARNER: All

1 right, all right. You were born in Texas and  
2 the family relocated to California when you were  
3 three or four years old. Your father was  
4 employed as a mechanic and a welder and you have  
5 a brother that was committed to CDC for murder.  
6 You had another brother who has had contact with  
7 law enforcement but never received a commitment  
8 to CDC. Began smoking marijuana two to three  
9 times a week at the age of 13 and at the age of  
10 13 began using heroin on weekends. And it  
11 progressed to the point where you were  
12 supporting a \$200 a day habit, correct?

13 INMATE MONTEZ: Yes sir.

14 PRESIDING COMMISSIONER GARNER: And about  
15 what age was that?

16 INMATE MONTEZ: The heroin?

17 PRESIDING COMMISSIONER GARNER: The  
18 heroin, yeah.

19 INMATE MONTEZ: I believe I was 13 or 14.

20 PRESIDING COMMISSIONER GARNER: That's a,  
21 that's a pretty healthy budget for dope.

22 INMATE MONTEZ: Well that came --

23 PRESIDING COMMISSIONER GARNER: That came  
24 later?

25 INMATE MONTEZ: Years later.

26 PRESIDING COMMISSIONER GARNER: All  
27 right. And at the age of 15 you began taking

1 Valium when you couldn't get the heroin and you  
2 supported your habit via odd jobs and  
3 burglaries. And you dropped out of high school  
4 at 16. Was that associated with some of the  
5 criminal difficulties?

6 INMATE MONTEZ: I just -- it might have  
7 been.

8 PRESIDING COMMISSIONER GARNER: Prior to  
9 dropping out of school how did you do in school?

10 INMATE MONTEZ: Average student, I guess.

11 PRESIDING COMMISSIONER GARNER: All  
12 right. And you stayed in the job corps for  
13 about 11 months studying as a heavy equipment  
14 operator. It looks like you went into the Army  
15 in 1970, got honorably discharged in '72,  
16 serving as a paratrooper in the Special Forces.  
17 Correct?

18 INMATE MONTEZ: Yes.

19 PRESIDING COMMISSIONER GARNER: Where did  
20 you serve?

21 INMATE MONTEZ: I served in the 82nd.

22 PRESIDING COMMISSIONER GARNER: Okay.

23 INMATE MONTEZ: Stateside.

24 PRESIDING COMMISSIONER GARNER: All  
25 stateside?

26 INMATE MONTEZ: Yes sir.

27 PRESIDING COMMISSIONER GARNER: Okay.

1 Did you get clean while you were in the  
2 military?

3 INMATE MONTEZ: I did, I did, I did all  
4 right in the military. I should have stayed in.

5 PRESIDING COMMISSIONER GARNER: Okay.  
6 And you got your GED while you were at the  
7 penitentiary in New Mexico.

8 INMATE MONTEZ: Yes sir.

9 PRESIDING COMMISSIONER GARNER: And that  
10 you have got certificates for welding. And that  
11 you lived in a common law relationship for about  
12 a year in New Mexico and you remained in that  
13 relationship until February of '79. You then  
14 lived with a Denise Garcia from May of '79 until  
15 you got married in April of '80. And you  
16 assumed the responsibility for your wife's son  
17 and then you had two daughters together. They  
18 are now being cared for and raised by  
19 grandparents.

20 INMATE MONTEZ: Yes.

21 PRESIDING COMMISSIONER GARNER: How old  
22 are they now?

23 INMATE MONTEZ: One is 26 and the other  
24 one is 25.

25 PRESIDING COMMISSIONER GARNER: Okay.  
26 How are they doing?

27 INMATE MONTEZ: They're doing real good.



1           PRESIDING COMMISSIONER GARNER: Both  
2 doing good? Married?

3           INMATE MONTEZ: Yes. The youngest one  
4 just recently got married in November.

5           PRESIDING COMMISSIONER GARNER: And the  
6 oldest one, does she have grandchildren for you?

7           INMATE MONTEZ: Yeah, both of them got  
8 grandchildren for me.

9           PRESIDING COMMISSIONER GARNER: Okay.  
10 And it speaks to your crime partner, your wife  
11 and the time she served and that you remain in  
12 contact with her and divorced in '83. At the  
13 time of the offense your wife and the children  
14 resided in your parents' home in Oxnard.

15          INMATE MONTEZ: Yes.

16          PRESIDING COMMISSIONER GARNER: Okay.  
17 While you were growing up, up until let's say  
18 the time you were about 16 or 17, were you ever  
19 hospitalized for any reason?

20          INMATE MONTEZ: No.

21          PRESIDING COMMISSIONER GARNER: Never  
22 been hospitalized, okay.

23          INMATE MONTEZ: I had my tonsils out when  
24 I was a kid but that was way before that.

25          PRESIDING COMMISSIONER GARNER: Okay.  
26 That's kind of a routine thing. While you were  
27 living with your wife at your folks' home in

1 Oxnard were you working?

2 INMATE MONTEZ: I was working as a  
3 roofer.

4 PRESIDING COMMISSIONER GARNER: Working  
5 as a roofer.

6 INMATE MONTEZ: Some company out of  
7 Industrial City.

8 PRESIDING COMMISSIONER GARNER: All  
9 right. Full time or just by the job?

10 INMATE MONTEZ: It was just a job site.

11 PRESIDING COMMISSIONER GARNER: Okay.  
12 Were you paid under the table or did you get a  
13 real check?

14 INMATE MONTEZ: Well I got a check but I  
15 signed it over to the guy that hired me so I  
16 don't know if it was under the table or what?

17 PRESIDING COMMISSIONER GARNER: Then he  
18 gave you cash?

19 INMATE MONTEZ: And then he gave me cash.

20 PRESIDING COMMISSIONER GARNER: Okay.  
21 How was your, how was your family life growing  
22 up?

23 INMATE MONTEZ: It was good. I believed  
24 it was good.

25 PRESIDING COMMISSIONER GARNER: Any  
26 issues of abuse in the household?

27 INMATE MONTEZ: None.

1           PRESIDING COMMISSIONER GARNER: With you  
2 or your brothers and sisters? Your mother, was  
3 she ever abused?

4           INMATE MONTEZ: You mean beatings or  
5 stuff like that?

6           PRESIDING COMMISSIONER GARNER: I'm going  
7 to distinguish between a whipping and a  
8 righteous beating.

9           INMATE MONTEZ: No, no, no. I mean, you  
10 know, we got our, we got our whippings when we  
11 had them coming.

12          PRESIDING COMMISSIONER GARNER: Okay. So  
13 far as your parole plans, and this is going back  
14 and it may change based on some of the letters.  
15 But at the time this report was written you were  
16 going to be released to your mother's home in  
17 Oxnard. Is that the same home you were living  
18 in at the time you got arrested --

19          INMATE MONTEZ: Yes.

20          PRESIDING COMMISSIONER GARNER: -- or has  
21 she moved? Does she own the home or renting it?

22          INMATE MONTEZ: It's her home, yes.

23          PRESIDING COMMISSIONER GARNER: Okay.

24          INMATE MONTEZ: But as far -- May I say  
25 something? As far as that, there were certain  
26 programs that I had written to and the latest  
27 was this one right here that I haven't given to

1 -- it was a drug program.

2 PRESIDING COMMISSIONER GARNER: Well this  
3 is old enough, let me go right to, right to the  
4 letters, which will give me a more current  
5 assessment as to what you plan to do. All  
6 right. The first one is March 1, 2006. It's  
7 typed and signed and it's signed by a Sal, S-A-  
8 L, Flores and Flores is with an S on the end.  
9 And there is also a business card attached to it  
10 for the firm of Ideal Upholstery with an address  
11 in Ventura, California. And the person that  
12 wrote the letter, his name is on the business  
13 card. Remind the Board that my offer for  
14 employment for him is still available and the  
15 place of business again is noted in Ventura,  
16 California. And that upon his release he is to  
17 contact me, establish a work schedule. An  
18 hourly salary of \$9, advancement based on  
19 performance. And it provides a telephone number  
20 if we want to contact Mr. Flores. The second  
21 letter is --

22 DEPUTY COMMISSIONER SMITH: Commissioner,  
23 if I may. The letter on the second -- the date  
24 of the second letter is 5/30/2002.

25 PRESIDING COMMISSIONER GARNER: Um-hmm.

26 INMATE MONTEZ: Yes.

27 DEPUTY COMMISSIONER SMITH: Was that

1 letter addressed at your last hearing in June  
2 2002?

3 INMATE MONTEZ: No. I think it might  
4 have been, I'm not sure. I presented one of the  
5 letters.

6 DEPUTY COMMISSIONER SMITH: Do you have a  
7 more current letter from them?

8 INMATE MONTEZ: I think it was the one  
9 you just, the one for 2006.

10 ATTORNEY RUTLEDGE: Let me just clarify.  
11 The letters that we've given you were the  
12 updated job letter. Now he doesn't have -- if  
13 you're talking about the Freedom House dated  
14 2002, that's no longer his plan.

15 INMATE MONTEZ: I think he's referring to  
16 the job letters, right?

17 DEPUTY COMMISSIONER SMITH: No, I'm  
18 referring to Freedom House, your residential  
19 plans.

20 INMATE MONTEZ: No, these are it right  
21 here.

22 ATTORNEY RUTLEDGE: Yes, these no longer  
23 apply, this one. It's an old letter they should  
24 have never put in here.

25 INMATE MONTEZ: That bed might be gone by  
26 now, you know.

27 DEPUTY COMMISSIONER SMITH: Well that's



1 my point, it's a letter that is four years old.

2 Not only may the bed be gone but that entire

3 operation may be gone.

4 INMATE MONTEZ: Yeah. I have a current  
5 letter.

6 DEPUTY COMMISSIONER SMITH: Okay, great,  
7 that's what I wanted to ask. Because there is  
8 no reason for the Commissioner to read a letter  
9 in that one, may have been addressed at your  
10 last hearing, and two, is four years old. So I  
11 appreciate you bringing the more current one.

12 INMATE MONTEZ: Thank you.

13 PRESIDING COMMISSIONER GARNER: All  
14 right, this is a letter that is dated May 9,  
15 2006 and it is from the Ventura County Rescue  
16 Mission. And it's an outreach of the ministry  
17 of Rescue Mission Alliance. And it is from a  
18 Kyle, K-Y-L-E, Venning, V like Victor, E-N-N-I-  
19 N-G, he is the interim chaplain counselor. The  
20 staff at Ventura County Rescue Mission has  
21 accepted your request for an interview to  
22 determine if you qualify for your drug and  
23 alcohol program. It speaks to upon a release  
24 that you report directly to the Mission for  
25 intake and all your court-appointed obligations  
26 with the exception of parole meetings must be  
27 taken care of before you commit to the nine-

1 month recovery program. You will need a  
2 driver's license, ID card and social security  
3 card. The indication is they don't provide  
4 transportation. The letter is not a guarantee  
5 of acceptance into the program. You've got to  
6 go through the intake interview process before  
7 being accepted. Then it speaks to being a  
8 Christ-centered and Biblically based program and  
9 provides a telephone number for you to call  
10 prior to your arrival. And attached to it is a  
11 description of the program, a brochure that was  
12 provided. I'll get these back to you before the  
13 end of the hearing. Okay, let me go ahead and  
14 note that we sent out our legal notices, the  
15 3042 notices that went to all the agencies that  
16 had a direct involvement in your case. For the  
17 record there is no written correspondence but we  
18 do have a representative from the Los Angeles  
19 County District Attorney's Office who will be  
20 speaking later in the hearing. At this time let  
21 me ask you to direct your attention over here to  
22 Commissioner Smith who is going to talk to you  
23 about your post-conviction factors.

24 DEPUTY COMMISSIONER SMITH: Mr. Montez,  
25 you were received by the Department of  
26 Corrections June 1, 1982. You were received  
27 here at CTF January 21, 1998. You have a

1 classification score of 19. Your last hearing  
2 was held on June 20, 2002. That was your sixth  
3 subsequent hearing and you received a two year  
4 denial at that time.

5 INMATE MONTEZ: Yes.

6 DEPUTY COMMISSIONER SMITH: The next  
7 hearing was scheduled for August 31, 2004. That  
8 was postponed as the psychological evaluation  
9 that was available for that hearing was old and  
10 a new evaluation was requested. And we have  
11 that and I'll address that. It's unfortunate  
12 that it took as long as it did for you to come  
13 back before the Board again. But as  
14 Commissioner Garner indicated, at that time the  
15 Board was short of staff to conduct the hearings  
16 and we're catching up with that. So we  
17 apologize for the delay but obviously you are  
18 here nevertheless. Since your last hearing you  
19 have been, you have been extremely active, for  
20 lack of a better word. You completed two EMI  
21 certificates from the Federal Emergency  
22 Management Agency October of '03 and November of  
23 '03 for Emergency Preparedness, Radiological  
24 Emergency Management. You received three  
25 laudatory chronos, two in April of 2006 and one  
26 in June of 2004 for a completion and  
27 participation in the employability program. You

1 received six -- pardon me -- 16 laudatory  
2 chronos all referencing your active AA and NA  
3 participation but it appears to be primarily AA.

4 INMATE MONTEZ: Yes.

5 DEPUTY COMMISSIONER SMITH: And those  
6 laudatory chronos go back from July of 2002  
7 through April of this year. And because your  
8 last hearing was June 2002 that's basically as  
9 far back as I went. You also received a  
10 laudatory chrono December of 2002 for completing  
11 the 13-week IMPACT workshop. Your disciplinary  
12 history has actually become quite positive. You  
13 have received only four CDC 128(a)s, the last  
14 one was in May 1989 and that was for a broken  
15 window in a cell. And you received seven CDC  
16 115s, the last one September of 1993 and that  
17 was for non-performance. In looking over the  
18 list there were a couple of initial 115s for  
19 possession of a controlled substance. But since  
20 that point, and that goes back to 1992 was the  
21 last one and that was a positive test for  
22 opiates. There has certainly been no indication  
23 that you have been involved in any controlled  
24 substance use since 1992 and there are no write-  
25 ups for violence or weapons. You have been  
26 assigned for some period of time to the PIA wood  
27 product area as a furniture assembler. Is that

1 still accurate?

2 INMATE MONTEZ: Yes.

3 DEPUTY COMMISSIONER SMITH: And you  
4 received exceptional and above-average work  
5 reports in that area. Your participation in AA  
6 has certainly been ongoing and been very  
7 consistent. Is that a program that you find  
8 important to you? And the reason that I ask  
9 that question is that some individuals simply  
10 attend that kind of a program because it looks  
11 better than not, and others of course have a  
12 real commitment to the program. And that's the  
13 reason I asked the question. How do you feel  
14 about the program?

15 INMATE MONTEZ: The program is, some  
16 people would say it's a crutch, like religion.  
17 But other people see it, the seriousness of it,  
18 as a fellowship. If you feel that, if you feel  
19 that you're going to relapse then you've got  
20 somebody that you can lean on and help you  
21 through it. That's what AA/NA is really about.  
22 To guide you through your hard times.

23 DEPUTY COMMISSIONER SMITH: Is that a  
24 program that you'll continue to participate in  
25 in the community?

26 INMATE MONTEZ: Yes, that's why I, that's  
27 why one of the reasons that I got that program



1 from that Rescue Mission because they offer  
2 AA/NA and fellowship. But really AA/NA, the 12  
3 principles, they're all Biblical but they have  
4 taken the religion aspect out of it.

5 DEPUTY COMMISSIONER SMITH: Do you know  
6 the steps?

7 INMATE MONTEZ: I know the steps as they  
8 pertain to me to keep me from relapsing. The  
9 way I apply them to myself and the things, I  
10 have to do for people that I might have hurt,  
11 you know. How to make amends, how to keep from  
12 falling back.

13 DEPUTY COMMISSIONER SMITH: Before I  
14 review the psychological evaluation are there  
15 any other activities that you have been involved  
16 in since your last hearing that I haven't  
17 addressed that we should be aware of?

18 INMATE MONTEZ: No, basically you've  
19 covered all bases.

20 DEPUTY COMMISSIONER SMITH: You certainly  
21 have a very positive -- if something should come  
22 to mind before we recess let me know because we  
23 want to make sure that we've captured all the  
24 positives.

25 INMATE MONTEZ: Yes sir.

26 DEPUTY COMMISSIONER SMITH: The  
27 psychological evaluation was dated May 11, 2006

1 prepared by Dr. Macomber, M-A-C-O-M-B-E-R. And  
2 I am going to identify or address just a couple  
3 of sections that I think are most, most  
4 important. And then if you or counsel have any  
5 comments or would like to address any of the  
6 other sections I'll certainly give you that  
7 opportunity. Going to page two Dr. Macomber  
8 writes that in the past based upon your criminal  
9 history you had been diagnosed as having  
10 antisocial personality disorder. But at this  
11 point in your life there is no evidence of any  
12 antisocial thinking or values. That your values  
13 are solidly pro-social, you have deep feelings  
14 of concern and empathy toward others. The  
15 doctor concludes that therefore there is no  
16 longer an appropriate diagnostic label of  
17 antisocial behavior. Moving to page three under  
18 assessment of dangerousness the doctor writes  
19 that in considering the potential for dangerous  
20 behavior in the institution you have remained  
21 disciplinary-free for over 12 years. And that  
22 due to your years of being disciplinary-free the  
23 doctor concludes that you no longer possess a  
24 risk to the institution. And compared to other  
25 inmates your potential for dangerous behavior is  
26 below average. In considering the potential for  
27 dangerous behavior when released to the

1 community the doctor addresses a measure or an  
2 exam that was given, identified as the Level of  
3 Service Inventory Revised document. And that  
4 document is an actuarial measure that assesses  
5 criminal history, substance abuse history,  
6 institutional adjustment, social relationships  
7 and other factors that are used to determine  
8 current risk level on parole. You obtained a  
9 score of 5.1. And as the doctor notes in the  
10 report, that means that if 100 men were released  
11 on parole you would do better on parole than 95  
12 of them. And the doctor notes, obviously, that  
13 this is a low risk. The doctor goes on to  
14 conclude that at this point in your life due to  
15 your maturity, growth, increased insight, that  
16 you possess no more risk to society than the  
17 average citizen in the community. In fact,  
18 based upon the positive changes in your life you  
19 probably pose less risk to society than the  
20 average citizen. That's a conclusion I won't\*  
21 disagree with but that's certainly open for  
22 discussion at some other time. Under clinical  
23 observations and recommendations the doctor  
24 writes that the prognosis for successful  
25 adjustment in the community is excellent.  
26 Mr. Montez, counsel, any comments or any other  
27 sections you would like to have addressed for

1 the record?

2 ATTORNEY RUTLEDGE: Not at this time,  
3 nothing.

4 INMATE MONTEZ: No sir.

5 DEPUTY COMMISSIONER SMITH: All right,  
6 thank you, I'll return it to Commissioner  
7 Garner.

8 PRESIDING COMMISSIONER GARNER:

9 Mr. Montez, let me ask you. It looks like the  
10 last indication of drug use while incarcerated  
11 was 1992 when you tested positive on a urine  
12 analysis for opiates, is that correct?

13 INMATE MONTEZ: Yes sir, that is correct.

14 PRESIDING COMMISSIONER GARNER: Have you  
15 been clean since that point?

16 INMATE MONTEZ: Yes sir. Well that's  
17 when, that was a wake-up call. Because I said,  
18 if I'm not going to change now, you know, I'm  
19 not ever going to change.

20 PRESIDING COMMISSIONER GARNER: So '92  
21 would have been your last --

22 INMATE MONTEZ: My last abuse, yes.

23 PRESIDING COMMISSIONER GARNER: Your last  
24 abuse, okay. And you did have the little  
25 episode at Folsom where you were actually  
26 charged but they chose not to prosecute you and  
27 you wound up with 115s.

1 INMATE MONTEZ: I think the one in Folsom  
2 was '82, wasn't it?

3 PRESIDING COMMISSIONER GARNER: Yeah, I  
4 think --

5 INMATE MONTEZ: The one in CRC was in  
6 '92.

7 PRESIDING COMMISSIONER GARNER: That's  
8 correct, yeah. Yeah, you had an October 22 of  
9 '82 and that was the marijuana and then December  
10 29 of '82. Both of those were Folsom. But the  
11 last urinalysis was at CRC.

12 INMATE MONTEZ: Yes sir.

13 PRESIDING COMMISSIONER GARNER: Okay.  
14 What caused the change from your plans in 2002  
15 when you were going to live with your mother to  
16 the present date?

17 INMATE MONTEZ: Well I had -- actually I  
18 had two letters. I had the Freedom Home one and  
19 I had my mother's. And they had given me a  
20 choice, right, where I would, where I would like  
21 to stay it. I said I would like to stay at my  
22 mother's house but the Freedom Home offered the  
23 program. That's why I had answered my mother's  
24 house.

25 PRESIDING COMMISSIONER GARNER: Okay.  
26 Are you, are you in contact with your family?

27 INMATE MONTEZ: Yes.



1           PRESIDING COMMISSIONER GARNER: Let me,  
2 ~~let me just quit beating around the bush.~~

3 Normally what we find in situations where we  
4 have large families we find a lot of letters of  
5 support that come in from the family, albeit  
6 offering financial support, offering you a place  
7 to live, offering you a car, or just offering  
8 you spiritual and emotional support. I note  
9 that there are some family members that have  
10 problems but you still have a lot of other folks  
11 left over. And I was just wondering why you  
12 don't have any letters from your family?

13           INMATE MONTEZ: They're right here.

14           ATTORNEY RUTLEDGE: He means -- They  
15 write you letters in the institution but have  
16 they provided support letters for you?

17           INMATE MONTEZ: Yes.

18           PRESIDING COMMISSIONER GARNER: Have you  
19 provided those to your counselor to get into  
20 your file?

21           INMATE MONTEZ: The counselor that I was  
22 going to give them to, he said just to bring  
23 them over here.

24           PRESIDING COMMISSIONER GARNER: When did  
25 he tell you that?

26           INMATE MONTEZ: A couple of weeks ago.

27           PRESIDING COMMISSIONER GARNER: All

1 right, well that's good advice a couple of weeks  
2 ago because they wouldn't have made it in in  
3 that time.

4 ATTORNEY RUTLEDGE: (Inaudible).

5 PRESIDING COMMISSIONER GARNER: Okay,  
6 okay.

7 ATTORNEY RUTLEDGE: (Inaudible).

8 PRESIDING COMMISSIONER GARNER: Thanks.

9 Well it just surprised me because normally with  
10 large, intact families like that we get a lot of  
11 letters.

12 ATTORNEY RUTLEDGE: (Inaudible)?

13 INMATE MONTEZ: My mother and my ex-wife  
14 and her kids.

15 PRESIDING COMMISSIONER GARNER: Okay,  
16 Okay, thank you.

17 ATTORNEY RUTLEDGE: And this is since the  
18 last hearing?

19 INMATE MONTEZ: And this is from my  
20 daughter. Some of those are from my last  
21 hearing and some of those I just received.

22 PRESIDING COMMISSIONER GARNER: Okay, I  
23 am going to read recent ones so that we don't --  
24 and particularly those that I'm able to find --

25 INMATE MONTEZ: Well the last hearing I  
26 was supposed to have.

27 PRESIDING COMMISSIONER GARNER: The one

1 where it was postponed?

2 ATTORNEY RUTLEDGE: That was one --

3 INMATE MONTEZ: And current. There's  
4 some current ones in there.

5 PRESIDING COMMISSIONER GARNER: Okay.

6 Well, let me get started. The first one is done  
7 in a memo form, it's from Victoria Garcia. It  
8 doesn't provide a date. Daughter of Victor.  
9 Inform you that my father has my full support in  
10 whatever he may need to get onto his feet and  
11 become a productive member of society. That you  
12 won't fall again. That you have been doing many  
13 things to get yourself together and ask that we  
14 give you a chance. For the record, the address  
15 noted in this is in the city of Oxnard. I'll  
16 try to make this next one out. This goes back  
17 to '04 and it's from Renee Montez with an  
18 address in Denver. It says, but you can tell  
19 the Board you have a place to reside wherever I  
20 am and Armando said you can stay with him. Let  
21 me just do the one that's contained here. A  
22 place to reside wherever I am at and that  
23 whatever you need I'll do what I can. In fact,  
24 the Coors Brewing Company has an ex-felon  
25 program. They could put you to work in the  
26 brewery warehouse welding or whatever. And if  
27 you have access to the Internet check out the

1 job listing at Coors and other places. And this  
2 was from Renee Montez who is a sister.

3 INMATE MONTEZ: Actually that was my  
4 brother.

5 PRESIDING COMMISSIONER GARNER: Oh, Renee  
6 is a brother?

7 INMATE MONTEZ: Yeah.

8 PRESIDING COMMISSIONER GARNER: Okay, I'm  
9 sorry about that.

10 INMATE MONTEZ: He's my youngest one.

11 PRESIDING COMMISSIONER GARNER: That one  
12 can go either way.

13 DEPUTY COMMISSIONER SMITH: There's an  
14 undated letter from his mother, the one --

15 PRESIDING COMMISSIONER GARNER: Okay, we  
16 have a handwritten letter from your mother.  
17 She's Reynalda, R-E-Y-N-A-L-D-A, address noted  
18 in Ventura. Victor does have a place to live  
19 ion my home. Also if finances are needed he'll  
20 have that as well. Take that into consideration  
21 and what he has done to better himself since  
22 incarcerated. She is now 78, she was 54 when  
23 you went into prison. That she lost a son to a  
24 violent act and still miss him. Mercy for those  
25 last few years of my life by letting him come  
26 home to me. SO that one is from your mother.  
27 August 12, 2004, it's handwritten, and this one

1 is from -- is Garcia the last name? I can't  
2 make it out.

3 INMATE MONTEZ: That's Victoria Garcia.

4 PRESIDING COMMISSIONER GARNER: Victoria  
5 Garcia. And this would be?

6 INMATE MONTEZ: My daughter.

7 PRESIDING COMMISSIONER GARNER: Daughter,  
8 okay. Daughter of Victor. Father has my  
9 support and my husband's. Full support as  
10 helping him financially. Also my husband  
11 Richard is in the process of opening his own  
12 small business which enables him to offer my  
13 father employment. In the process of buying our  
14 own home. We'll have a place for him to live.  
15 Only a few months old when you were  
16 incarcerated. Speaks to you not making the best  
17 choices but that you have changed and that --  
18 allow my father to come home to his family, his  
19 mother, daughters and three beautiful  
20 grandchildren ages one through five. We are  
21 anxiously awaiting his arrival. And that one,  
22 again, I think I said it was August 12, 2004.

23 DEPUTY COMMISSIONER SMITH: There are two  
24 letters here from Martha Duran, the most recent  
25 is dated May 4, '06. That will be the one that  
26 Commissioner Garner will address. There are  
27 actually two letters attached but the other one



1 is older so we'll address the most current.  
2 Also just in case you're wondering, there was a  
3 copy of the letter that your mother sent that I  
4 just pulled, pulled out to the side. That  
5 letter has already been addressed. And before  
6 you read that I'm going to turn the tapes.

7 (The tape was turned over.)

8 DEPUTY COMMISSIONER SMITH: Thank you.

9 PRESIDING COMMISSIONER GARNER: Okay.

10 The date has already been noted on the letter  
11 and it's from Martha Duran, who is your ex-wife.  
12 I want to again reaffirm that I am still willing  
13 and able to support in whatever area is needed.  
14 We'll work together with the assigned parole  
15 agent to make sure he keeps his appointments,  
16 signs up for all services that are required so  
17 he can be a productive member of society, assist  
18 him in finding a job. And as far as having a  
19 place to parole, he has a place to live with me.  
20 I am employed, I have transportation it will not  
21 be a problem. I stand with him and still  
22 support his strongly. And this is from Martha  
23 Duran who provided a cell phone telephone number  
24 and there is an address, it looks like it's in  
25 Oxnard. So Ms. Duran is in the Oxnard area?

26 INMATE MONTEZ: Yes.

27 PRESIDING COMMISSIONER GARNER: All

1 right, very good. With that, that pretty much  
2 got all the letters of support from your family?

3 INMATE MONTEZ: Yes. I was going to  
4 bring the real old ones to show a pattern but I  
5 didn't think they were needed.

6 PRESIDING COMMISSIONER GARNER: No, this  
7 is, this is fine. Okay, with that I'm going to  
8 ask you to direct your attention -- excuse me,  
9 we've already done that. I'm ahead of myself.  
10 Okay, I will ask if Commissioner Smith has any  
11 follow-up questions.

12 DEPUTY COMMISSIONER SMITH: No, I have no  
13 questions.

14 PRESIDING COMMISSIONER GARNER: All  
15 right. Mr. Lapin, any questions?

16 DEPUTY DISTRICT ATTORNEY LAPIN: I know  
17 that the inmate refuses to discuss the offense.  
18 I'm wondering if he will refuse to also discuss  
19 where he may have gotten the gun regarding the  
20 offense?

21 INMATE MONTEZ: I don't see no reason to.  
22 I believe this was settled when the District  
23 Attorney's Office offered me a plea bargain.  
24 All this was supposed to be, have been taken  
25 care of. I don't know why they keep bringing it  
26 up.

27 ATTORNEY RUTLEDGE: That would mean he

1 doesn't --

2 ~~DEPUTY DISTRICT ATTORNEY LAPIN:~~ -- Then  
3 that's a refusal. Also I would like to know if  
4 he committed any other crime prior to the crime  
5 that he is being incarcerated for on that  
6 evening?

7 INMATE MONTEZ: I don't see how that has  
8 any bearing on this hearing.

9 PRESIDING COMMISSIONER GARNER: Other  
10 than those read into the record, sir?

11 DEPUTY DISTRICT ATTORNEY LAPIN: I have  
12 no other questions.

13 PRESIDING COMMISSIONER GARNER: All  
14 right. Ms. Rutledge, questions?

15 ATTORNEY RUTLEDGE: I wanted to ask my  
16 client to authenticate these letters. What are  
17 these letters?

18 INMATE MONTEZ: Those were, those were  
19 more letters from different programs to give the  
20 Board. If they weren't satisfied with the ones,  
21 the choice that I made that they might be able  
22 to pick from those.

23 ATTORNEY RUTLEDGE: I would note that  
24 Mr. Montez has written to several other social  
25 services like California Veterans Assistance,  
26 Lutheran Social Services in Southern California  
27 and New Directions of Los Angeles, if the Board

1 wishes to view those during deliberations. But  
2 I just wanted to note that he has also pursued  
3 other areas. And he also had -- I saw a flier  
4 in your file about assistance offered through  
5 the parole program. What was that about?

6 INMATE MONTEZ: That was from -- The PIA  
7 has a -- I don't know if you gave it back to me.  
8 The PIA that I work for has a representative in  
9 the EDD that when we get out we go directly to  
10 them and if we don't have a job they'll help us  
11 get one and our driver's license.

12 ATTORNEY RUTLEDGE: All right. And then  
13 the last question would be, you told the  
14 Commissioner that you stopped the drugs about  
15 '93. Have you had any other life changes? Do  
16 you want to explain to us why you, what's  
17 happened to you since you have been in prison as  
18 far as life changes go.

19 INMATE MONTEZ: Well it's like I  
20 explained earlier. In 1992, you know, I was  
21 like, you know, I was doing the same things up  
22 until 1992. When I got that last write-up for  
23 the dirty UA I said, you know, there has to be a  
24 change, you know. If I'm going to make it in  
25 the streets if you guys ever let me out I have  
26 to, I have to prove to myself that I can make  
27 it. And being in prison with all this madness

1 going around and keeping myself clean without  
2 ~~getting any write-ups and trying to be a model~~  
3 citizen as far as prison is concerned is trying  
4 to show that I can be a model citizen out in the  
5 street. But it has to start in here. I had to  
6 start in here.

7 ATTORNEY RUTLEDGE: All right, no further  
8 questions.

9 PRESIDING COMMISSIONER GARNER: All  
10 right, Mr. Lapin, would you like to close.

11 DEPUTY DISTRICT ATTORNEY LAPIN: Yes I  
12 would. And Commissioner Garner, I would like to  
13 add to the facts as you disclosed them earlier.  
14 Going from the probation officer's report  
15 starting at page seven line three. Where I  
16 believe Mrs. Irma Sabalos (phonetic), who was  
17 the third person in the vehicle, informed  
18 officers of the Los Angeles Police Department  
19 West Valley Division on August 11, 1980 that:

20 "At approximately 10:30 p.m. on  
21 August 9, 1980 she and two  
22 associates, Victor Montez and  
23 Denise Montez, had been visiting  
24 San Bernardino and had stopped in  
25 San Fernando Valley for a pizza on  
26 the return trip. When the three  
27 attempted to start the brown



1 station wagon afterwards it failed  
2 to start and they decided to  
3 hitchhike on the Ventura Freeway.  
4 They first approached an unnamed  
5 male approximately one-half hour  
6 later. Subsequently it was agreed  
7 that the witness and Mrs. Montez  
8 would appear as two females  
9 stranded on the freeway while  
10 Mr. Montez would approach any  
11 motorist who stopped and exhibit a  
12 firearm he carried in his  
13 waistband. The defendant hid in  
14 the bush area while the women  
15 hitchhiked. The victim approached  
16 in a silver Datsun station wagon,  
17 license number 828 YHP, conversed  
18 with Mrs. Montez then allowed them  
19 to enter his vehicle. The witness  
20 entered the front seat and  
21 Mrs. Montez entered the rear seat  
22 while beckoning to the defendant  
23 who was hiding in the bushes. The  
24 defendant ran to the vehicle  
25 brandishing a small caliber  
26 firearm and entered the rear seat  
27 of the vehicle. He then pointed

1 the weapon at the rear portion of  
2 the victim's head and told him to  
3 take them to Oxnard or he would  
4 kill him. The defendant fired one  
5 round without warning striking the  
6 victim approximately in the lower  
7 right of the head. The victim  
8 fell forward. The defendant  
9 exited the rear passenger door and  
10 opened the front passenger door.  
11 The defendant drug the victim's  
12 body across the front seat from  
13 the driver's side and secreted the  
14 body beneath an overhanging tree  
15 and shrub area. The witness then  
16 observed the defendant going  
17 through the victim's garment but  
18 was unsure of what was removed.  
19 The witness and Mrs. Montez had  
20 also exited the vehicle. The  
21 defendant then instructed the  
22 witness to re-enter the vehicle  
23 and told his wife to wear gloves  
24 so as not to leave her  
25 fingerprints on the vehicle. He  
26 then entered the rear seat and  
27 instructed his wife to drive the

1 vehicle to 456 Channel Islands  
2 Boulevard in Oxnard. Upon arrival  
3 at that residence, which was  
4 occupied by Teresa Ramirez,  
5 Mrs. Montez removed clothing which  
6 had belonged to the victim and  
7 attempted to wash them. The  
8 witness was upset and the  
9 defendant comforted her,  
10 indicating they could not be  
11 identified and there was no way to  
12 trace their location. When the  
13 witness suggested they turn  
14 themselves in the defendant  
15 threatened her with acts of  
16 violence and stated she would be  
17 killed if she contacted the  
18 police."

19 I believe those factors need to be considered by  
20 this Board, those factors in aggravation of this  
21 offense. This is an extremely atrocious crime ~~—~~  
22 committed by a admitted heroin addict. There  
23 was absolutely no reason for this individual to  
24 have been killed. The inmate, his wife and a  
25 friend, the car broke down and they were trying  
26 to get a ride to Oxnard and apparently the  
27 victim agreed to take them. Why he had to kill

1 him is only known to him. His drug abuse can be  
2 documented back to the age of 13 when he was  
3 noticed by a law enforcement agency to have  
4 marks on his arms. And that drug abuse  
5 apparently continued at least through 1992 and  
6 is only in remission at this point because he is  
7 in prison. The fact that he has refused to  
8 discuss the offense, I understand he has that  
9 right to do so. He has also refused to discuss  
10 any other factors regarding where he got the gun  
11 or if there were any other crimes committed.  
12 That only shows that this individual has not  
13 really accepted responsibility for his crime, a  
14 crime that can only be determined to be an  
15 aggravated situation. There is nothing in  
16 mitigation other than the psychiatric report and  
17 his recent years of laudatory type chronos in  
18 his file and a lack of discipline. But the  
19 crime is so atrocious and so wanton and uncalled  
20 for that I'm suggesting the Board deny him  
21 parole for another five years. Thank you.

22 PRESIDING COMMISSIONER GARNER: Thank  
23 you. Ms. Rutledge.

24 DEPUTY COMMISSIONER SMITH: Ms. Rutledge,  
25 before we go into your closing, and Mr. Lapin,  
26 I'll certainly give you an opportunity to  
27 follow-up, I have one quick question I want to

1 interrupt. Mr. Montez, what period of time were  
2 you and Martha Duran married?

3 INMATE MONTEZ: I think it was '93 to  
4 '95.

5 DEPUTY COMMISSIONER SMITH: So you were  
6 married while you were in prison?

7 INMATE MONTEZ: Yes sir.

8 DEPUTY COMMISSIONER SMITH: Okay. So you  
9 have never resided together.

10 INMATE MONTEZ: No.

11 DEPUTY COMMISSIONER SMITH: Okay, thank  
12 you. I appreciate that. Mr. Lapin, any follow-  
13 up questions?

14 DEPUTY DISTRICT ATTORNEY LAPIN: No,  
15 thank you.

16 DEPUTY COMMISSIONER SMITH: Okay.

17 ATTORNEY RUTLEDGE: All right, thank you.  
18 I just wanted to note that the Commissioner read  
19 the prisoner's version from the 2002 Board  
20 report. And in that it indicates that  
21 Mr. Montez gave a statement to his counselor,  
22 the probation officer that he had the gun  
23 pointed at the victim's head and he believed the  
24 gun fired when the victim adjusted himself.  
25 That it was not his intention to kill the  
26 victim. I would also note that the narrative  
27 read by the People taken from the probation



1 report was by the third accomplice who was  
2 granted immunity. That statement would likely  
3 have problems being admissible in a regular  
4 court of law due to certain evidence rules. I \*  
5 know the evidence rules don't apply here but  
6 however information still has to be reliable.  
7 And I would ask the Board to give that statement  
8 its due weight on what you think would be  
9 reliable. Going to the factors in suitability  
10 for Mr. Montez. This crime only involved one  
11 victim. It wasn't dispassionate, calculated or  
12 an execution-style murder based upon what he has  
13 told, his comments he has made about the murder.  
14 It appears that the -- also based on the facts  
15 that the victim, they had a plan that he was  
16 supposed to drive them somewhere. So it really  
17 wouldn't make sense, I would speculate, for him  
18 to shoot the guy if they were asking him for a  
19 ride somewhere and he got back in the car with  
20 them. There was -- It wasn't an especially  
21 heinous crime or atrocious. The motive for the  
22 crime, it appears that it was an accident.  
23 Mr. Montez looks like he had a stable family  
24 when he was growing up. He doesn't have any  
25 history of psychological problems. His  
26 institutional behavior since 1993 has been very  
27 positive. He has a very positive psych report,

1 which I will go into in a moment, and he has not  
2 had any write-ups in it looks like 13 -- his  
3 last 115 I believe was in '93. None of those  
4 write-ups have been violent. His prior prison  
5 term was for car theft. It sounded like most of  
6 his crimes were property, theft of property type  
7 offenses. This would appear to be his first  
8 conviction for violence. He did serve the  
9 United States in the Army for two years and  
10 while he's been here he has gotten several  
11 vocations. He is also a certified legal  
12 assistant and paralegal?

13 INMATE MONTEZ: Yes.

14 ATTORNEY RUTLEDGE: And he did  
15 that, that's in his C File,  
16 through a mail program. He has  
17 been in AA and NA consistently for  
18 the last, since his last hearing.  
19 He's had two different anger  
20 management courses, he's done peer  
21 education. He has laudatory  
22 chronos from IEP. He's done the  
23 IMPACT program and I think that  
24 just -- kind of parlay that.  
25 Aside from his work with the PIA  
26 and the IEP program I want to go  
27 into his insight and remorse into

1 the crime. It looks like the  
2 IMPACT program may have had some  
3 impact on him. In the 2004, I  
4 think it's the Board Report --  
5 this is by your counselor, right?  
6 Yeah. It states on the very last  
7 page, but I can't see the page  
8 number. Oh, it's page number  
9 five. It says:  
10 "While discussing the facts of the  
11 crime Montez was candid when  
12 expressing remorse for the victim  
13 and makes no excuses for his  
14 behavior. He realizes that his  
15 actions is what led to the demise  
16 of the victim. He indicates that  
17 he must prove to himself and  
18 society, thereby earning society's  
19 trust in order to integrate back  
20 into the free world in the future.  
21 He expressed the need to continue  
22 AA and NA counseling in order to  
23 eliminate the unnecessary  
24 stressors in his life. In terms  
25 of employment the prisoner has  
26 acquired skills in welding,  
27 plumbing, furniture assembly --"

1 And in parentheses:

2       "-- standard line and semi-custom,  
3       roofing, cement finisher and  
4       upholstery repair. He has a GED  
5       and has earned a certificate as a  
6       legal assistant and paralegal."

7 So it appears that the rehabilitation programs  
8 available to him have helped him gain insight  
9 and helped him with his remorse. And that  
10 counselor recommended that he remain  
11 disciplinary-free, which he has done,  
12 participate in NA programs, which he's continued  
13 to do. I think it would appear that he is  
14 definitely trying to deal with the contributing  
15 factor to this crime, the drug addiction, the  
16 long-term drug addiction issues. I would note  
17 in the file too that he is -- in the recent  
18 psych report by Dr. Macomber it indicates that  
19 he became a Christian at some point and he is  
20 aware -- I'm quoting from page two, I'm reading:

21       "He is aware of the importance of  
22       remaining clean and sober. He is  
23       very active in Bible studies. His  
24       understanding and knowledge of the  
25       Bible are significant and  
26       considerable. He has incorporated  
27       Biblical values into his life. As

1 a result he is determined to lead

2 a wholesome, helpful to others

3 productive life that pleases both

4 God and man. He asserts drugs is

5 no longer a problem in his life."

6 So all those things considered what I think we

7 have here is a rehabilitated inmate. Somebody

8 who is the poster boy for the reason why we have

9 sentences that start with a certain number of

10 years and go to life. We have a 53-year-old man

11 who has been in the system now for 24 years.

12 And those 24 years have been good to him as far

13 as helping him with his substance abuse issues

14 and to get some insight into the crime and

15 change the person that he is. He does not pose

16 an unreasonable risk of danger, he does meet the

17 suitability factors and I would ask that the

18 Board give him a parole date, thank you.

19 PRESIDING COMMISSIONER GARNER: Okay,

20 thank you. Mr. Montez, this is your opportunity

21 to address the panel on the subject of your

22 suitability for parole.

23 INMATE MONTEZ: Yes sir. Before when I

24 came up before the Board I was always asked, do

25 you think you're ready? Up until 1997 my answer

26 was always, and because I believed it, no, I'm

27 not ready. I admitted at that time that I



1 wasn't ready. Now I can tell you that this day,  
2 that I am ready. Mind, spirit and soul I am  
3 ready to go out there and be a productive member  
4 to society. If I wasn't I'd tell you myself I  
5 wasn't ready. I am more than ready. I wish I  
6 could take back that day but I can't. His  
7 people suffer, my people suffer, you know,  
8 because we went through the same thing. I am  
9 deeply sorry. I never tried to make contact  
10 with the family because I think that would hurt  
11 them more. But if I could apologize to them I  
12 would. I wouldn't ask for forgiveness because,  
13 you know, I think that would be an insult to  
14 them. I just hope you take that into  
15 consideration. Thank you.

16 PRESIDING COMMISSIONER GARNER: Thank  
17 you. It is now 11:59 a.m. and we'll recess for  
18 deliberations.

19 R E C - E S S

20 --oOo--

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## 1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 ~~D E C I S I O N~~

3 DEPUTY COMMISSIONER SMITH: We are back  
4 on the record. Everyone previously identified  
5 is back in the hearing room.

6 PRESIDING COMMISSIONER GARNER: Very  
7 good, thank you. It's 12:20 p.m. in the matter  
8 of Victor Montez, C Charles 48215. Mr. Montez,  
9 the panel has reviewed all the information  
10 received from the public and relied on the  
11 following circumstances in concluding you are  
12 not suitable for parole and would pose an  
13 unreasonable risk of danger to society or a  
14 threat to public safety if you were released  
15 from prison. I want to tell you right out of  
16 the chute we're going to deny you for a year and  
17 we'll talk a little bit more about that as we  
18 proceed through the hearing. We started with  
19 the commitment offense. Although we considered  
20 many factors we started with the commitment  
21 offense and we felt that the offense was carried  
22 out in an especially cruel manner. The victim,  
23 Michael Stewart, 33 years of age, was shot in  
24 the head after he stopped to render aid to what  
25 he thought were two individuals that were in  
26 distress along the side of the freeway. The  
27 VICTOR MONTEZ C-48215 DECISION PAGE 1 05/31/06

1 offense was carried out in a very dispassionate  
2 and calculated manner in that the first vehicle  
3 to stop was going to be the target. It was  
4 pretty clearly drawn that you put the two women  
5 out on the freeway as a lure and that you were  
6 hiding in the bushes and unfortunately it was  
7 Mr. Stewart that was the first Samaritan that  
8 decided to stop and help. The victim was <sup>no facts</sup>  
9 defiled after the offense in that he was  
10 stripped, his body was concealed along the  
11 shoulder of the Ventura Freeway and just  
12 basically left in the shrubbery. The motive for  
13 the crime, when you consider the magnitude of  
14 the offense, it was very trivial. You had the  
15 car. The worst case scenario you could have  
16 just ordered him out to the side of the freeway  
17 but that's neither here nor there at this point  
18 in time. The conclusions were drawn from the  
19 statement of facts that were taken from the June  
20 2002 calendar in that:

21 "On August 9, 1980 Montez and two  
22 women, one of whom was his wife,  
23 were on their way home, on their  
24 way to Oxnard when their car  
25 became disabled. The two women  
26 began to hitchhike on the Ventura

1 Freeway while Montez hid in the  
2 bushes. It was agreed that the  
3 two women would appear as two  
4 females stranded on the freeway  
5 while Montez would approach the  
6 motorist who stopped and exhibit a  
7 firearm he carried in his  
8 waistband. The victim, Michael  
9 Stewart stopped for the women.  
10 The women entered the car and Ms.  
11 Montez entered the rear seat while  
12 beckoning to Montez who was still  
13 hiding in the bushes. He ran to  
14 the car brandishing a small  
15 caliber firearm and entered the  
16 rear seat of the car. He pointed  
17 the firearm at the back of the  
18 victim's head and told him to  
19 drive them to Oxnard or he would  
20 kill him. Montez then fired,  
21 striking and killing the victim.  
22 Montez exited the car, dragged the  
23 body from the car and secreted the  
24 body beneath an overhanging tree  
25 and shrubs. After leaving the  
26 body Montez, his wife and the  
27 VICTOR MONTEZ C-48215 DECISION PAGE 3 05/31/06

1 other female companion drove the  
2 victim's car to Oxnard. Montez  
3 was arrested on August 11, 1980."  
4 So far as your previous record the panel noted  
5 at the time that you did have an escalating  
6 pattern of criminal conduct and that you had  
7 failed previous grants of probation. And that  
8 you had failed from society's previous attempts  
9 to correct your criminality through the CYA  
10 commitment. So far as the social history the  
11 panel noted -- the criminality, excuse me. The  
12 controlled substances and entering a non-  
13 commercial dwelling which was an offense, a  
14 602.5 offense, which was associated with a  
15 burglary, which was dismissed in the interest of  
16 justice. Excuse me. As far as your  
17 institutional behavior you have programmed very  
18 well. So far as the misconduct goes it is old  
19 and dated. The last 128, you've had a total of  
20 four, was May 26, 1989 and the last 115 was  
21 September 16, 1995 for non-performance of work.  
22 So far as the psychological report prepared by  
23 Dr. Macomber in May 2006, it's favorable. So  
24 far as your parole plans the one thing that we  
25 wanted to note is we did take into consideration  
26 the letter that you had from essentially the  
27 VICTOR MONTEZ C-48215 DECISION PAGE 4 05/31/06



1 halfway house is for an interview only. And we  
2 realize that very few of the halfway houses will  
3 give you a firm commitment but one of that  
4 things that really amplifies is the need to have  
5 a firm backup parole plan that's very  
6 comprehensive with a member of the family. Or  
7 two; you can certainly have more than one. Also  
8 if you are concerned about paroling back to the  
9 county of the commitment offense, if the panel  
10 thinks that you have a better shake and a better  
11 chance going to another location to another  
12 county we have the authority to parole you into  
13 that county. So in this situation it looks like  
14 the lion's share of your family is in the  
15 Ventura County area. So if your letters come  
16 forward from Ventura County with respect to  
17 offers of housing, those would coincide with the  
18 job offer that you have from Mr. Flores because  
19 I believe that the job offer and his business is  
20 in Ventura County. So get started as soon as  
21 you can. I will share with you that the panel  
22 does have some concerns about the offer of  
23 housing from Martha Duran. We think you would  
24 be better served with family members. That's  
25 not to say it would be excluded. We're just  
26 thinking that the family members are more of a  
27 VICTOR MONTEZ C-48215 DECISION PAGE 5 05/31/06

1 positive and might serve your interest in a more  
2 positive way. You were here, you heard the  
3 response from the representative from the Los  
4 Angeles County District Attorney's Office  
5 indicating opposition to parole. So what we're  
6 going to do at this point is we're going to  
7 encourage you to continue your AA/NA, whichever  
8 is available, and continue to earn the positive  
9 chronos. And with that I'll ask Commissioner  
10 Smith if he has got additional comments.

11 DEPUTY COMMISSIONER SMITH: Sir, quite  
12 frankly with regard to the residential plan with  
13 Ms. Duran. The parole division probably would  
14 not approve that since you no longer have a  
15 relationship. She's an ex-wife and that you  
16 don't have a history of residing. It might be  
17 fine with the next Board but from my experience  
18 with the parole division they probably would not  
19 approve that.

20 INMATE MONTEZ: I understand.

21 DEPUTY COMMISSIONER SMITH: You know, I  
22 am certainly not being critical of your efforts,  
23 your efforts are all positive. But I am just  
24 suggesting that in this next year spend time to  
25 really, really firm up the plans. You have got  
26 a lot of options. You know, I'd focus on the

27 VICTOR MONTEZ C-48215 DECISION PAGE 6 05/31/06

1 strongest ones.

2 INMATE MONTEZ: Okay.

3 DEPUTY COMMISSIONER SMITH: You are  
4 certainly moving in the right direction. You  
5 may be disappointed and if you are I certainly  
6 understand that. But you are headed in the  
7 right direction, in my opinion. I believe that  
8 all things being equal with some improvements  
9 that at your next hearing you will be a much  
10 stronger candidate. A strong candidate today  
11 but a much stronger candidate the next time. So  
12 don't lose focus on what your objective is --

13 INMATE MONTEZ: No.

14 DEPUTY COMMISSIONER SMITH: -- which is  
15 to get out of here. Okay?

16 INMATE MONTEZ: Yes.

17 DEPUTY COMMISSIONER SMITH: I wish you  
18 well sir. Good luck to you.

19 INMATE MONTEZ: Thank you.

20 PRESIDING COMMISSIONER GARNER: I'll go  
21 ahead and echo the comments. I am certainly  
22 glad I asked about letters from your family now  
23 because they really are -- they are more of an  
24 asset than you will ever know. We have a lot of  
25 inmates that come before us that basically have  
26 no one on the outside, absolutely no one on the

27 VICTOR MONTEZ C-48215 DECISION PAGE 7 05/31/06

1 outside. They have either outlived them all or  
2 the family has just basically written them off.  
3 So you have got an asset there. It's going to  
4 be your strength. It's going to be your social  
5 and support network. Your employer is not going  
6 to provide that, you're family is going to  
7 provide your support network. The other thing,  
8 that whatever family member you think offers you  
9 the best plan for yourself, it would be helpful  
10 also to have that family member identify AA/NA  
11 resources that are immediately in the  
12 neighborhood near them or the closest possible  
13 to them. And whether they're along public  
14 transportation routes or they are going to offer  
15 to drive you there. Those are all things that  
16 shore you up as a better candidate. I echo his  
17 sentiment. I hope that you are not too  
18 disappointed. Keep your focus because right now  
19 the only thing that in my mind you have to work  
20 on is shoring up the parole plans. I'll tell  
21 you, don't slip on any banana peels calling a 15  
22 or a 128 because that's not going to help you.  
23 You've got some distance between those and you  
24 don't have to worry about them right now. They  
25 are not an issue at least with this panel and I  
26 can't see them being an issue with the next  
27 VICTOR MONTEZ C-48215 DECISION PAGE 8 05/31/06

1 panel you come before. With that I'll go ahead  
2 and note that it is now 12:28 p.m. and I am  
3 going to wish you the best of luck. Get to  
4 work.

5 INMATE MONTEZ: Okay. Well I just want  
6 to say that I read First Peter's 2:14 and I  
7 submitted to that so I am not disappointed.  
8 (Indiscernible).

9 ATTORNEY RUTLEDGE: Thanks a lot.

10 DEPUTY COMMISSIONER SMITH: Thank you  
11 both.

12 ATTORNEY RUTLEDGE: Good luck to you.

13 INMATE MONTEZ: Thank you.

14 --oOo--

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23 PAROLE DENIED ONE YEAR

SEP 28 2006

24 THIS DECISION WILL BE FINAL ON: \_\_\_\_\_

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT  
26 DATE, THE DECISION IS MODIFIED.

27 VICTOR MONTEZ C-48215 DECISION PAGE 9 05/31/06



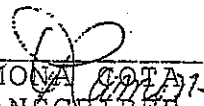
CERTIFICATE AND  
DECLARATION OF TRANSCRIBER

---

I, RAMONA COTA, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 61, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of VICTOR MONTEZ, CDC NO. C-48215, on MAY 31, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated August 13, 2006, at Sacramento County, California.

  
\_\_\_\_\_  
RAMONA COTA  
TRANSCRIBER

PETERS SHORTHAND REPORTING

**EXHIBIT 3**  
**Part 4 of 4**



**EXHIBIT "7"**



LIFE PRISONER EVALUATION REPORT  
SUBSEQUENT PAROLE CONSIDERATION HEARING  
JUNE 2004 CALENDAR

MONTEZ, VICTOR MANDEL

C48215

I. COMMITMENT FACTORS:

- A. Life Crime: All relevant documents from the previous hearing including the transcripts, have been considered and that information appears valid, and the writer has no further information to add.
1. Summary of Crime: Remains the same as stated in the previous hearings.
  2. Prisoner's Version: Remains the same as stated in the previous hearings.
  3. Aggravating/Mitigating Circumstances:
    - a. Aggravating Factors: Remains the same as stated in the previous hearings.
    - b. Mitigating Factors: Remains the same as stated in the previous hearings.
- B. Multiple Crime(s): None.
1. Summary of Crime: N/A.
  2. Prisoner's Version: N/A.

II. PRECONVICTION FACTORS:

- A. Juvenile Record: Documents from the previous hearings have been considered and that information remains valid.
- B. Adult Convictions: Documents from the previous hearing have been considered and that information remains valid.

COPY TO INMATE ON 100004

- C. **Personal Factors:** Documents from the previous hearings have been considered and that information remains valid.

### III. POSTCONVICTION FACTORS:

- A. **Special Programming/Accommodations:** None.
- B. **Custody History:** Documents from the previous hearings have been considered and the information remains valid. During the period of time since the last hearing, the prisoner has remained at the Correctional Training Facility and housed in the general population in a dorm setting. He has maintained a stable work record and presently assigned to the PIA Wood Furniture Assembly Factory. In review of the prisoner's work performance covering a period from 4/1/02 to 7/01/02, he demonstrated satisfactory work grades. However, noting a period from 7/1/02 to 11/01/02 per CDC 101 Work Supervisor's Reports dated 9/1/02, 10/1/02 and 11/1/02, the prisoner's work performance declined due to his attitude towards his supervisor and staff, his interest in his respective assigned work, teamwork building participation and quality of work. His supervisor comments were: Inmate Montez continued to actively pursue a transfer out of the Assembly Shop and has not worked since his last report dated 10/02. His quarterly report periods from 11/01/02 to 8/1/03 dated 2/1/03, 5/1/03 and 8/1/03, reflect improvement grades of satisfactory to above average work grades. In addition, during this review period, Montez enrolled in an Independent Study Program through Coastline Community College and was unable to complete the semester. However, he enrolled into the Federal Emergency Management Agency Institute, which is an independent study course. He earned two (2) Certificates of Achievement dated 11/13/03, in Radiological Emergency Management and Emergency Preparedness, USA dated 10/17/03. Finally, there are no documents in the Central File to reflect any vocational training upgrading experience during this review period.
- C. **Therapy and Self-Help Activities:** Participation in Narcotics Anonymous per CDC 128B dated 7/2/01, 7/10/01, 10/01/01, 10/2/01, 1/11/02, 1/17/02, 2/15/02, 3/29/02, 4/11/02, 07/01/02, 07/17/02, 10/01/02, 10/16/02, 12/21/02, 1/8/03, 4/23/03 and 5/6/03.

Participated in the donation drive for the American Red Cross in response to the terrorist attacks of September 11, 2001 in New York, Pennsylvania and Washington D.C. per CDC 128 dated 12/13/01.

Participated in and completed the Muslim Development Center's Anger Management Course per CDC 128B dated 2/20/02.



Successfully completed a thirteen-week Impact workshop - self-help group designed to provide education and awareness relative to the profound negative impact of crime and its affect on victims and the ripple effect on society per CDC 128-B dated 12/16/02.

- D. Disciplinary History: None during this review period. However, (7) CDC 115's and (4) 128-A's are noted.

CDC 128A's

11/06/84	CTF	Unauthorized Covering on Window.
08/19/85	CTF	Failure to Report to Work.
11/21/86	CTF	Unexcused Absence from School.
05/26/89	CMC-East	Broken Window in Cell.

CDC 115's

10/22/82	FOL	Possession of Marijuana. Disposition: Guilty. 10 days disciplinary detention suspended, plus 90 days screen visits.
12/29/82	FOL	Possession of Marijuana. Disposition: Guilty. 10 days disciplinary detention plus 90 days screen visits.
06/25/83	FOL	Out of Cell Without Authorization. Disposition: Guilty. Counseled and reprimanded.
03/03/86	CTF	Possession of Contraband Shirt. Charged \$8.50 plus 30 days loss of yard privileges.
01/09/89	CMC	Non-Performance (work). Disposition: Guilty, 15 days loss of credit.
02/12/92	CRC	Positive U/A for Opiates. Disposition: Guilty, 150 days loss of credit plus 120 days loss of contact visiting.
09/16/93	CRC	Non Performance (work). Disposition: Guilty, assessed 10 hours extra duty.

- E. Other: On 6/20/02, Montez was seen by the Board of Prison Terms for his Subsequent Parole Consideration Hearing #6. The Board's decision was to deny

parole for (2) years, and recommend that the prisoner remain disciplinary free and participate in narcotic anonymous self-help and therapy programs.

#### IV. FUTURE PLANS:

- A. Residence: The prisoner indicates that his parole plans have changed. His plans are to live at the Freedom House, located at 460 South "F" Street, Oxnard, CA 93030. Telephone: 805-483-8343. Contact person: Jeff Simpson, Administrator. This facility is a 90- day clean and sober living environment for men. A letter of conditional acceptance was noted in the Central File dated 5/30/03. If released from prison, Montez states that he wants to make it on his own merit out in the free world, without the assistance or help of his family. However, he states that updated letters of support from his family and friends are forthcoming.
- B. Employment: Remains the same as indicated in the previous Board Report dated 6/2002. In addition, the prisoner completed 915 hours and received a Certificate of Legal Assistant/ Paralegal from the Blackstone School of Law Paralegal Studies, Inc. dated 11/9/01, at Dallas, Texas. During this interview, the prisoner did not offer a job reference, however, he feels confident that he will secure employment once he is released. His secondary plans are to work in the oil fields around in the state.
- C. Assessment: At the present time, the prisoner's parole plans appears stable at this time. Montez indicates that his plans are to reside in a residential home with a 12- step program that offers a sober and clean living environment for drug and alcohol offenders. He also indicates, once he completes this program, he will be able to secure employment and become independent to reintegrate back into society. He has acquired skills in welding, plumbing, furniture assembly (standard line and semi-custom), roofing, cement finisher and upholstery repair. He received a Certificate from the Blackstone Paralegal Studies, Inc., as a legal assistant/paralegal by completing 915 hours of correspondence studies. However, Montez did not offer a job reference at this time, he feels confident that he will secure employment once he is released.

#### V. USINS STATUS: N/A.

#### VI. SUMMARY:

- A. Considering the commitment offense, prior record and prison adjustment, this writer believes the prisoner would probably pose a low degree of threat to the public at this time, if released from prison. This impression is based on the

prisoner's disciplinary history for eleven years, his stable work record, participation in self-help programs and his efforts of educational upgrading experience during this review period. While discussing the facts of the crime, Montez was candid when expressing remorse for the victim, and makes no excuses for his behavior. He realizes that his action's is what lead to the demise of the victim. He indicates that he must prove to himself and society thereby earning society's trust, in order to integrate back into free world in the future. He expressed the need to continue A.A. and N.A. counseling in order to eliminate the unnecessary stressors in his life. In terms of employment, the prisoner has acquired skills in welding, plumbing, furniture assembly (standard line and semi-custom), roofing, cement finisher and upholstery repair. He has a GED, and has earned a certificate as a legal assistant and paralegal. Montez indicates, once he is released, he is confident that he will secure employment and use the tools that he has gained and experienced to become a positive member of society.

- B. Prior to release the prisoner could benefit from:
  - 1) Remaining disciplinary free,
  - 2) Participate in Narcotics Anonymous Self-Help Programs and therapy programs.
- C. This report is based upon an interview with the prisoner on 3/25/04 lasting approximately 1.5 hours and a complete review of the Central File lasting 3 hours.
- D. Montez was afforded an opportunity to examine his Central File on 3/25/04 per the Olson decision per CDC 128B.
- E. No accommodation was required per the Armstrong vs. Davis BPT Parole Proceedings Remedial Plan (ARP) for effective communication.

OF CALIFORNIA

BOARD OF PRISON TERMS

## LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

## INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
07/01 to 6/02			<p><b>PLACEMENT:</b> Remained at the Correctional Training Facility - II and housed in the general population.</p> <p><b>CUSTODY:</b> Medium A.</p> <p><b>VOC. TRAINING:</b> None during this review period.</p> <p><b>ACADEMICS:</b> None noted this review period.</p> <p><b>WORK RECORD:</b> Assigned to the PLA Wood Furniture Factory Assembly Shop. There are no work supervisor reports in the Central File noting work performance during this period.</p> <p><b>GROUP ACTIVITIES:</b> Participated in N/A per CDC 128B's dated 7/10/01, 10/01/01, 10/02/01, 1/11/02, 1/17/02, 2/15/02, 3/29/02 and 4/11/02. Participated in and completed the Muslim Development Center's Anger Management Course per CDC 128B dated 2/20/02.</p> <p><b>PSYCH. TREATMENT:</b> None during this review period.</p> <p><b>PRISON BEHAVIOR:</b> None during this review period.</p> <p><b>OTHER:</b> N/A.</p>
			DATE

MONTEZ, VICTOR

C48215

CTF-SOLEDAD

JUN/2004

## CONTINUATION SHEET: LIFE PRISONER : POSTCONVICTION PROGRESS REPORT

STCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
06/02 to 06/03			<p><b>PLACEMENT:</b> Remained at the Correctional Training Facility- II and housed in the general population.</p> <p><b>CUSTODY:</b> Medium A</p> <p><b>VOC. TRAINING:</b> None during this review period.</p> <p><b>ACADEMICS:</b> None during this rating period.</p> <p><b>WORK RECORD:</b> Assigned to the PIA Wood Furniture Assembly Shop. He earned above average work grades and received exceptional grades for the use of tools and equipment per CDC 101 dated 7/1/02. However, a CDC 101 dated 9/1/02, reflects the prisoner's performance declined due to his attitude toward his supervisor and staff, his interest in his respective assigned work, teamwork building and participation and quality of work. His supervisor comments: Montez continues to "opt out" of work, whenever he is given the chance, as noted a CDC 101 dated 11/01/02. He continues to actively pursue a transfer and has not worked since his last report per CDC 101 dated 11/1/02.</p> <p><b>GROUP ACTIVITIES:</b> Participated in NA per CDC 128B's dated 7/17/02, 7/1/02, 10/1/02, 10/16/02, 12/1/02, 1/8/03, 4/23/03, and 5/6/03. He completed a thirteen week Impact workshop self help group designed to provide education and awareness relative to the profound negative impact of crime and its affect on victims and the ripple effect on society per CDC 128B dated 12/16/02.</p> <p><b>PSYCH. TREATMENT:</b> None during this review period.</p> <p><b>PRISON BEHAVIOR:</b> None during this review period.</p> <p><b>OTHER:</b> On 6/20/02, Montez was seen by the Board of Prison Terms for his Subsequent Parole Consideration Hearing #6. The Board's decision was to deny parole for (2), and recommend that the prisoner remain disciplinary free and participate in Narcotic Anonymous self-help and therapy programs.</p>

## ORDER:

- |                          |                      |         |                          |                                   |
|--------------------------|----------------------|---------|--------------------------|-----------------------------------|
| <input type="checkbox"/> | BPT date advanced by | months. | <input type="checkbox"/> | BPT date affirmed without change. |
| <input type="checkbox"/> | PBR date advanced by | months. | <input type="checkbox"/> | PBR date affirmed without change. |

## SPECIAL CONDITIONS OF PAROLE:

- ☐ Previously imposed conditions affirmed.
- ☐ Add or modify
- ☐ Schedule for Progress Hearing on appropriate institutional calendar

MONTEZ, VICTOR

C48215

CTF-SOLEDAD

JUN/2004



BOARD OF PRISON TERMS

STATE OF CALIFORNIA

## CONTINUATION SHEET: LIFE PRISONER : POSTCONVICTION PROGRESS REPORT

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
6/03 to 3/31/04 (Present)			<p><b>PLACEMENT:</b> Remained at the Correctional Training Facility- II and housed in the General Population.</p> <p><b>CUSTODY:</b> Medium A</p> <p><b>VOC. TRAINING:</b> None noted during this review period.</p> <p><b>ACADEMICS:</b> Enrolled into the Federal Emergency Management Agency Institute and completed (2) independent study courses and received Certificate(s) of Achievement in - Emergency Preparedness, USA dated 10/17/03 and Radiological Emergency Management dated 11/13/03.</p> <p><b>WORK RECORD:</b> The prisoner remained assigned to the PIA Wood Furniture Assembly Factory. His attitude changed and his work performance reflected satisfactory work grades per CDC 101 dated 5/01/03, and 8/1/03.</p> <p><b>GROUP ACTIVITIES:</b> None noted during this review period.</p> <p><b>PSYCH. TREATMENT:</b> None noted during this review.</p> <p><b>PRISON BEHAVIOR:</b> None noted during this review.</p> <p><b>OTHER:</b> N/A.</p>

## ORDER:

- |                          |                      |         |                          |                                   |
|--------------------------|----------------------|---------|--------------------------|-----------------------------------|
| <input type="checkbox"/> | BPT date advanced by | months. | <input type="checkbox"/> | BPT date affirmed without change. |
| <input type="checkbox"/> | PBR date advanced by | months. | <input type="checkbox"/> | PBR date affirmed without change. |

## SPECIAL CONDITIONS OF PAROLE:

- ☐ Previously imposed conditions affirmed.
- ☐ Add or modify
- ☐ Schedule for Progress Hearing on appropriate institutional calendar

MONTEZ, VICTOR

C48215

CTF-SOLEDAD

JUN/2004

BOARD OF PRISON TERMS

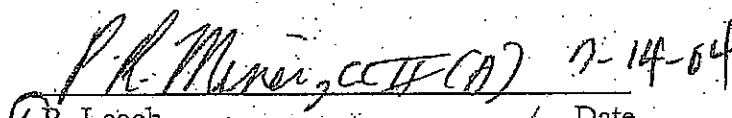
STATE OF CALIFORNIA



H. Staten  
Correctional Counselor I

7-14-04

Date



R. Leach  
Correctional Counselor II

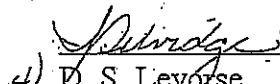
7-14-04  
Date



R. Pope  
Facility Captain

7-18-04

Date



4) D. S. Levorse  
Classification and Parole Representative

7-16-04

Date

BOARD OF PRISON TERMS

STATE OF CALIFORNIA

## LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

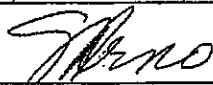
- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

ADDENDUM


## INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT

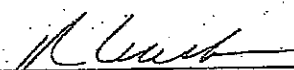
TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
4/04 to 4/05			<p>PLACEMENT: CTF.</p> <p>CUSTODY: Medium A.</p> <p>VOC. TRAINING: None noted during this period.</p> <p>ACADEMICS: None noted during this period.</p> <p>WORK RECORD: Inmate Montez continued as a Furniture Assembler and received exceptional and above average ratings in various categories on his work supervisor's reports.</p> <p>GROUP ACTIVITIES: He continued his participation in A.A/N.A Program. On 6/10/04 Montez received a CDC 128B laudatory chrono for his participation in the Inmate Employability Program.</p> <p>PSYCH. TREATMENT: None during this review period.</p> <p>PRISON BEHAVIOR: Inmate Montez remained disciplinary free during this period.</p> <p>OTHER: None.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE			DATE
			5/12/05
MONTEZ, VICTOR	C48215	CTF-SOLEDAD	


COPY TO INMATE ON  
May 18, 2005

  
S. Arno  
Correctional Counselor I

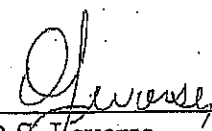
5/12/05  
Date

  
R. Leach  
Correctional Counselor II

5/12/05  
Date

  
R. Pope  
Facility Captain

5-13-05  
Date

  
D.S. Levorse  
Classification and Parole Representative

CAPR 5-17-05  
Date

MONTEZ

C48215

CTF-SOLEDAD


## LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

- ☐ DOCUMENTATION HEARING
- ☒ PAROLE CONSIDERATION HEARING
- ☐ PROGRESS HEARING

ADDENDUM

## INSTRUCTIONS

TO CDC STAFF: DOCUMENT EACH 12-MONTH PERIOD FROM THE DATE THE LIFE TERM STARTS TO PRESENT  
 TO BPT STAFF: FOR EACH 12-MONTH INCREMENT APPLY THE GUIDELINES UNDER WHICH THE PAROLE DATE WAS ORIGINALLY  
 ESTABLISHED, ie., 0-2 MONTHS FOR PBR AND 0-4 MONTHS FOR BPT. SEE BPT §§2290 - 2292, 2410 AND 2439.

POSTCONVICTION CREDIT			REASONS
YEAR	BPT	PBR	
4/05 to 4/06 (Present)			<p><b>PLACEMENT:</b> CTF.</p> <p><b>CUSTODY:</b> Medium A.</p> <p><b>VOC. TRAINING:</b> None noted during this period.</p> <p><b>ACADEMICS:</b> None noted during this period.</p> <p><b>WORK RECORD:</b> He continued his assignment as a Furniture Assembler in the P.I.A. Wood Products section and received exceptional and above average ratings in various categories on his Work Supervisor's Reports.</p> <p><b>GROUP ACTIVITIES:</b> Inmate Montez continued his fine participation in the AA Program per several CDC 128B laudatory chronos.</p> <p><b>PSYCH. TREATMENT:</b> None noted during this period.</p> <p><b>PRISON BEHAVIOR:</b> He remained disciplinary free during this period.</p> <p><b>OTHER:</b> None.</p>
CORRECTIONAL COUNSELOR'S SIGNATURE			DATE
			4/25/06

MONTEZ, VICTOR

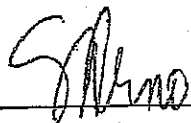
C48215

CTF-SOLEDAD



## LIFE PRISONER: POSTCONVICTION PROGRESS REPORT

ADDENDUM

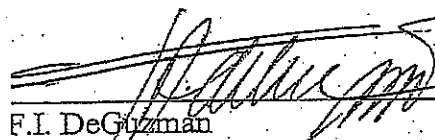


4/25/06

S. Arno

Date

Correctional Counselor I



Date

F.I. DeGuzman

Correctional Counselor II (A)

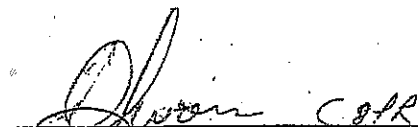


5-3-06

R. Pope

Date

Facility Captain



5-5-08

D.S. Levorse

Date

Classification and Parole Representative

MONTEZ, VICTOR

C48215

CTF-SOLEDAD



**EXHIBIT "8"**



**MENTAL HEALTH EVALUATION FOR  
THE BOARD OF PRISON HEARINGS  
May, 2006 Lifer Calendar**

**CORRECTIONAL TRAINING FACILITY SOLEDAD  
MAY, 2006**

**NAME:** MONTEZ, VICTOR  
**CDC#:** C-48215  
**DOB:** 7/6/53  
**OFFENSE:** PC 187 MURDER, SECOND DEGREE  
**DATE OF OFFENSE:** 8/9/80  
**SENTENCE:** 17 YEARS TO LIFE  
**MEPD:** 4/9/90  
**EVALUATION DATE:** 5/11/06

**I. IDENTIFYING INFORMATION:**

Mr. Victor Montez is a 52 year old, first term, divorced, Hispanic male. He is a Christian. He has served 25 years on his sentence.

**SOURCES OF INFORMATION:**

This evaluation is based upon a single 90 minute interview, plus review of the central and medical files.

The psychological evaluation, written on 6/20/00, at CTF-Soledad for the BPT by Dr. Terrini, Psychologist, contains a Psychosocial Assessment. This information was reviewed with the inmate and is still current and valid. As a result, this information will not be repeated at this time.

MONTEZ, VICTOR

C-48215

5/11/06

PAGE 2

CLINICAL ASSESSMENTXII. CURRENT MENTAL STATUS/TREATMENT NEEDS

Mr. Montez related during the interview in a serious, outgoing, friendly and cooperative manner. His mental status was within normal limits. He was alert and well oriented. His thinking was rational, logical and coherent. His speech was normal, fluent and goal oriented. His affect was appropriate. There was no evidence of anxiety or of depression. His eye contact was good. Intellectually, he was functioning in the average ranges. His memory was intact. His judgment was intact. His insight and self-awareness were very good.

Mr. Montez has a criminal background associated with his heroin addiction. He continues to attend Alcoholics Anonymous. He has not used drugs since 1992, when he last received a positive urinalysis test. He has been clean and sober now for 14 years. Mr. Montez is very aware of the destructive effects of drugs or of alcohol in a person's life. He is aware of the importance of remaining clean and sober. He is very active in Bible studies. His understanding and knowledge of the Bible are significant and considerable. He has incorporated Biblical values into his life. As a result, he is determined to lead a wholesome, helpful to others, productive life, that pleases both God and man. Use of drugs is no longer a problem in his life. It certainly is not a current diagnostic problem.

He has acquired significant vocational skills. He has experience as a welder, working with the arc and gas. He also is certified in Vocational Office Machine Repair. He has worked as a plumber. He is working now in PIA Furniture Manufacturing. He also has worked as a heavy equipment operator in the past. He also attended Blackstone School of Law and is certified as a paralegal. In addition to this achievement, he has completed the Inmate Employability Program, Finding Employment, sponsored by Prison Industries Authority. He continues to attend Alcoholics Anonymous. He has his GED. He also has completed Anger Management.

In the past, based upon his criminal history, Mr. Montez has been diagnosed as having an Anti-Social Personality Disorder. At this point in his life there is no evidence of any antisocial thinking or values. His values are solidly pro-social. He has deep feelings of concern and empathy towards others. Therefore, this is no longer an appropriate diagnostic label.

MONTEZ, VICTOR

C-48215

5/11/06

PAGE 3

CURRENT DIAGNOSTIC IMPRESSION

Axis I: No mental disorder  
 Axis II: No personality disorder  
 Axis III: No physical disorder  
 Axis IV: Life term incarceration  
 Axis V: Current GAF: 90

XIII. REVIEW OF LIFE CRIME

Mr. Montez accepts full responsibility for the commitment offense. He put a gun to the victim's head in an effort to rob him. The victim's elbow hit the gun, and it went off accidentally. He stated that he did not intend to hurt the victim. He does take full responsibility for the victim's death. He stated that due to his actions, and the victim's loss of his life, the victim's family has suffered. He commented how he understands how the victim's family has never been able to recover from their suffering due to the victim's loss of life. He knows this, because he has developed insight into what the family feels when they lose a loved one. He lost a brother in a similar situation. The family is still suffering from this loss. His feelings of remorse appear to be sincere and genuine.

He stated that he had become a Christian through the ministry of Victory Outreach prior to this offense. He stated that he had begun to backslide. He stated that because he was disobedient to God and God's expectations for his life, he was a disobedient child and God placed him in a situation, where he would have ample opportunity to study the Bible, explore his own life, seek forgiveness for his sins, and grow spiritually. He stated that he believes that when this process in which he must continue to grow and advance spiritually is finished, God will allow him to be released from prison.

XIV. ASSESSMENT OF DANGEROUSNESS

- A. In considering potential for dangerous behavior in the institution, he has remained disciplinary free for over 12 years. Prior to that time, he did receive disciplinaries for possession of marijuana and use of heroin. At that point in time, his potential for dangerous behavior was higher. However, due to his years of being disciplinary free, he no longer poses a risk to the institution; and compared to other inmates, his potential for dangerous behavior is below average.
- B. In considering potential for dangerous behavior when released to the community, the Level of Service Inventory-Revised was administered.



MONTEZ, VICTOR

C-48215

5/11/06

PAGE 4

This is an actuarial measure that assesses criminal history, substance abuse history, institutional adjustment, social relationships and other factors to determine current risk level on parole. He obtained a score of 5.1 cumulative frequency for prison inmates. This means that if 100 men were released on parole, he would do better on parole than 95 of them. This is a low risk score. At this point in his life, due to his maturity, growth, and increased insight, he poses no more risk to society than the average citizen in the community. In fact, based upon the positive changes in his life, he probably poses less risk to society than the average citizen.

C. There are no significant risk factors in this case.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS

There are no mental or emotional problems in this case that would interfere with routine parole planning. This man has a supportive family in the community. He plans on living with his mother in Oxnard. He also has developed job offers in the community. He also has letters in the file, indicating that he has been accepted for placement in a residential substance abuse program. He has numerous vocational skills that will enable him to maintain work in the community. All of these positive factors are strong indicators that he will do well on parole. The prognosis for successful adjustment in the community is excellent.

*M. Macomber Ph.D.*

M. Macomber, Ph.D.  
Correctional Psychologist  
Correctional Training Facility, Soledad

*B. Zika, Ph.D.*

B. Zika, Ph.D.  
Senior Psychologist  
Correctional Training Facility, Soledad

D: 5/11/06

T: 5/12/06

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**EXHIBIT "9"**

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES****DEPT 100**

Date: AUGUST 15, 2007

Honorables: STEVEN R. VAN SICKLEN  
NONEJudge JOSEPH M. PULIDO  
Bailiff NONEDeputy Clerk  
Reporter

(Parties and Counsel checked if present)

BH004498

In re,  
VICTOR M. MONTEZ,  
Petitioner,  
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered petitioner's Writ of Habeas Corpus filed on January 2, 2007. Having independently reviewed the record, giving deference to the broad discretion of the Board of Parole Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the Board's finding that petitioner is unsuitable for parole (See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4<sup>th</sup> 616, 667 (hereafter *Rosenkrantz*)).

Petitioner was received in the Department of Corrections on June 1, 1982 after a conviction for second-degree murder with use of a firearm. He was sentenced to seventeen years to life. His minimum parole eligibility date was April 9, 1990. The record reflects that on August 9, 1980, petitioner, his wife, and a female companion were traveling to Oxnard when their car broke down on the Ventura Freeway. The two women stood on the side of the freeway waiting for someone to stop to offer help, while petitioner hid in the bushes. The victim stopped for the two stranded women. As they entered the vehicle, petitioner ran up brandishing a gun. He ordered the driver to take them to Oxnard. He then fired the weapon killing the victim. He dragged the body out of the car and hid it under a tree and shrubs. Then, petitioner and his crime partners drove off in the victim's car. Petitioner contends that he fired the gun accidentally when the victim attempted to adjust the seat.

The Board found petitioner unsuitable for parole after a parole consideration hearing held on May 31, 2006. Petitioner was denied parole for one year. The Board concluded that petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision on several factors, including his commitment offense.

The Court finds that there is some evidence to support the Board's finding that "the motive for the crime is inexplicable or very trivial in relation to the offense" (Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(E).) "To fit the regulatory description, the motive must be materially less significant (or more "trivial") than those which conventionally drive people to commit the offense in question, and therefore more indicative of a risk of danger to society if the prisoner is released than is ordinarily present." (*In re Scott* (2004) 119 Cal.App.4<sup>th</sup> 871, at 893.) In this case, petitioner and his crime partners killed the victim because they needed a ride to Oxnard. The Board was justified in concluding that this motive is materially less significant motives than those motives which

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES****DEPT 100**

Date: AUGUST 15, 2007

Honorable: STEVEN R. VAN SICKLEN  
NONEJudge JOSEPH M. PULIDO  
Bailiff NONEDeputy Clerk  
Reporter

(Parties and Counsel checked if present)

BH004498

In re,  
VICTOR M. MONTEZ,  
Petitioner,  
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

conventionally drive people to commit murder, thus indicating that petitioner poses a greater risk of danger to society if released than is ordinarily present.

Additionally, the record reflects that petitioner had an unstable social history prior to the commitment offense, which is a factor tending to indicate unsuitability for parole. (Cal. Code Regs., tit. 15, §2402, subd. (c)(3).) Petitioner began using heroin when he was thirteen years old. He eventually developed a \$200 a day habit. He was first arrested at the age of thirteen and had several more arrests as an adult, leading to sentences of probation and state prison in New Mexico. He dropped out of high school when he was sixteen years old. Heavy drug use, school problems, and prior criminality are some evidence of an unstable social history. (*In re Van Houten* (2004) 116 Cal.App.4<sup>th</sup> 339, 353.)

The Court rejects petitioner's argument that he is entitled to release based on the terms of his plea agreement. A plea bargain violation claim depends upon the actual terms of the agreement, not the subjective understanding of the defendant or deficient advice provided by his attorney. (*In re Honesto* (2005), 130 Cal.App.4<sup>th</sup> 81, 91-93.) According to the terms of his plea bargain, petitioner pled guilty to second degree murder with use of a firearm and agreed to a sentence that carried a maximum term of life in prison. Petitioner has "no vested right to determination of his sentence at less than the maximum." (*In re Schoengarth* (1967) 66 Cal.2d 295, 302.) Therefore, the Board did not violate the plea bargain in finding petitioner unsuitable for parole.

Accordingly, the petition is denied.

The court order is signed and filed this date. The clerk is directed to give notice.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Victor M. Montez  
C-48215  
Correctional Training Facility  
P.O. Box 689  
Soledad, California 93960

Department of Justice- State of California  
Office of the Attorney General  
Gregory J. Marcot, Deputy Attorney General  
110 West A Street, Suite 1100  
San Diego, CA 92101

<b>SUPERIOR COURT OF CALIFORNIA</b> <b>COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp  <b>CONFORMED COPY</b>  AUG 15 2007  LOS ANGELES SUPERIOR COURT  Joseph M. Pulido
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		CASE NUMBER:  BH004498
PLAINTIFF/PETITIONER:  VICTOR M. MONTEZ		
<b>CLERK'S CERTIFICATE OF MAILING</b> CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- |  |  |
|--|--|
| <input type="checkbox"/> Order Extending Time            | <input checked="" type="checkbox"/> Order re: Writ of Habeas Corpus                          |
| <input type="checkbox"/> Order to Show Cause             | <input type="checkbox"/> Order   |
| <input type="checkbox"/> Order for Informal Response     | <input type="checkbox"/> Order re:   |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of Petition for Writ of Habeas Corpus for the Attorney General |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

August 15, 2007  
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Joseph M. Pulido, Clerk  
Joseph M. Pulido

Victor M. Montez  
C-48215  
Correctional Training Facility  
P.O. Box 689  
Soledad, California 93960

Department of Justice- State of California  
Office of the Attorney General  
Gregory J. Marcot, Deputy Attorney General  
110 West A Street, Suite 1100  
San Diego, CA 92101



**EXHIBIT "10"**

**Memorandum**

October 23, 1997

cc: CDW'S  
AW'S  
C&PR CCRM  
HCM  
LIT COOR

To: Wardens  
Classification and Parole Representatives  
Classification Staff Representatives  
Correctional Counselor IIIs

Subject: CLARIFICATION OF CALIFORNIA CODE OF REGULATIONS SECTION 3375.2  
HOUSING FOR LEVEL I AND LEVEL II LIFE-TERM INMATES

This memorandum clarifies questions regarding the California Department of Corrections' policy for housing life-term inmates. The California Code of Regulations Section 3375.2 (a)(7)(A) explains an inmate serving any life term shall not be housed in a Level I or II facility if "...the commitment offense involved multiple murders, unusual violence, execution-type murders or received high notoriety."

Staff repeatedly question the meaning and intent of these exclusionary factors. Staff shall use the following definitions in applying this policy:

- "Multiple murders" means the inmate killed more than one victim during the commission of the crime for which the inmate is currently serving the life term. This does not include inmates who have killed more than one person during their criminal career. Serial killers shall be excluded from Level I or II placement even if the murders were prosecuted separately.
- "Unusual violence" means offenses wherein the inmate tortured the victim over a period of time or intentionally made the victim endure great pain and suffering. While stabbing, shooting, or beating the victim may be very violent, it is not necessarily "unusual violence."
- "Execution-type murders" include those crimes wherein the victim was shot in the head after being bound or cuffed, made to kneel, made to lie down, or made to face a wall. This does not include all crimes wherein the victim was killed to prevent testimony, killed in a "drive-by" shooting, or killed as an informant by orders of prison or street-gang leadership.
- "High notoriety" is meant to describe those cases that received, at least, statewide media coverage. Extensive coverage by local newspapers or television stations is not sufficient for exclusion.

AW-C

PROOF OF SERVICE BY MAIL

CASE NAME: MONTEZ v. CURRY

CASE NO. : To be assigned (L.A. Supp.Ct no. BH004498)

I, Victor M. Montez, hereby declare that I am a party to the above titled action and am over the age of eighteen (18), and I did serve a true copy of the following:

WRIT OF HABEAS CORPUS W/EXHIBITS

by placing a true copy in an envelope with first class postage fully prepaid and said envelope surrendered to correctional staff at the Correctional Training Facility for delivery to the prison mail room and therefrom delivered to the local United States Post Office the next business day from which there is postal service between the place of mailing and the addressee:

Jerry Brown  
Attorney General  
110 West "A" Street, #1100  
San Diego, CA 92101

I declare under penalty of perjury that the foregoing is true and correct, doing so this 17 day of September, 2007, at Soledad, California.

Victor M. Montez

DOCKETING  
OUTGOING

2007 SEP 25 PM 4: 15

ATTORNEY GENERAL  
LOS ANGELES

2007 SEP 25 PM 9: 17

EX-100

## **EXHIBIT 4**



**S158142****SUPREME COURT  
FILED**

NOV - 9 2007

Frederick K. Ohlrich Clerk

---

DEPUTY

## IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

Victor M. Montez,

On Habeas Corpus  

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CASE No. \_\_\_\_\_

(App. Ct. Case No. B202287

Second Appellate District;

Supp.Ct. Case No. BH004498,

Los Angeles County)

## P E T I T I O N   F O R   R E V I E W

After Decision of the Court of Appeal, Second Appellate District,  
Denying the Petition for Writ of Habeas Corpus on November 2, 2007.

Victor M. Montez, C-48215  
Correctional Training Facility  
P.O. Box 689  
Soledad, CA 93960

Petitioner in pro per

RECEIVED  
NOV 9 - 2007  
CLERK SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

Victor M. Montez,

On Habeas Corpus

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CASE No. \_\_\_\_\_

(App. Ct. Case No. B202287

Second Appellate District;

Supp.Ct. Case No. BH004498,

Los Angeles County,

TO THE HONORABLE CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT AND  
THE ASSOCIATE JUSTICES OF THE COURT:

COMES NOW Victor M. Montez (hereafter Petitioner), respectfully  
requesting review of the decision of the Court of Appeals, Second  
Appellate District, filed on November 2, 2007 (ATTACHMENT A).

I.

QUESTION FOR REVIEW

This case presents the following questions for review:

1. WAS IT A VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION TO FIND HIM UNSUITABLE OR PAROLE TWENTY-SIX YEARS AFTER THE COMMITMENT OFFENSE RESULTING IN A SECOND DEGREE MURDER CONVICTION WHEN THE BOARD OF PAROLE HEARINGS NOR THE LOWER COURTS MADE ANY RATIONAL CONNECTION BETWEEN THE COMMITMENT OFFENSE AND PRESENT THREAT TO PUBLIC SAFETY?
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II.

NECESSITY FOR REVIEW

Review is necessary to bring lower state courts into uniformity in applying the two prong test of the "some evidence" standard of review approved of by this Court in cases cited below.

III.

JURISDICTION OF THE COURT

This Court has jurisdiction to decide cases of statewide interest (Cal. Rules of Court, Rule 29(a)(1)).

IV.

HISTORY OF THE CASE

On August 19, 1980, Petitioner and his wife, accompanied by a female friend, were hitchhiking along the Ventura Freeway. As a ruse to get a car to stop, Petitioner hid in the bushes while the two women hitchhiked. When Michael Stewart stopped to pick up the two women, Petitioner entered the car through the passenger side rear door and pointed a gun behind Mr. Stewart's head, demanding that he give them a ride to Oxnard. Mr. Stewart agreed. Mr. Stewart then adjusted his seat, and when he did, the seat hit Petitioner's arm and the pistol he was pointing at Mr. Stewart's head fired, hitting Mr. Stewart in the head and killing him instantly. Mr. Stewart's body was dragged from his car and hid in the bushes along the Freeway. Petitioner was arrested the next day, August 11, 1980, and has been incarcerated since.

On March 26, 1982, Petitioner pled guilty to one count of second degree murder. Throughout judicial proceedings, that the death of Mr. Stewart was an accidental shooting, was never contested by the prosecution.

Petitioner's minimum eligible parole date was fixed by the Board of Parole Hearings (hereafter Board) to be April 9, 1990. On May 31, 2006, Petitioner appeared before the Board for the EIGHTH time.

Over Petitioner's 26 years of imprisonment, he has completed

all self-help programs available to him, the Board recognizing he has been "extremely active"; Petitioner's last disciplinary action was in 1993, and he has never received a disciplinary action for violence or weapons.

The Board's own forensic experts concluded that Petitioner, "due to maturity, growth, and increased insight, he poses no more risk to society than the average citizen in the community. In fact, based on the positive changes in his life, he probably poses less risk to society than the average citizen." The Commissioner stated: "That's a conclusion I won't disagree with." Thus, the experts agree, including the Board, that Petitioner is NOT a present danger.

The primary reason Petitioner was denied parole was the commitment offense from 26 years ago, but the Board did not, nor even attempt, to make a rational connection between the offense 26 years ago and Petitioner's current threat to public safety. Petitioner has exceeded the minimum term for first degree murder (25 years), and with custody credits, has exceeded the 33 year term on the Board's matrix for first degree murder. Petitioner was offered, and agreed, to plead guilty to second degree murder.

The Board also cited, in its decision, Petitioner's minor, non-violent, prior criminal history.

Also, although Petitioner had parole plans for half-way houses, and with his mother, trying to show the Board options, with residence and financial support from his mother, the Board criticized plans for halfway houses, and told Petitioner he needed parole plans with a family member. Perhaps the Board does not consider a prisoner's mother to be a "family member."

## VI.

ARGUMENT

An indeterminate sentence under the Uniform Determinate Sentencing Act of 1976 (UDSA) is a "hybrid" (In re Dannenberg (2005) 34 Cal.4th 1061 at 1083), applying both the rehabilitation model of the repealed indeterminate sentencing law (ISL) and punishment model of the UDSA. The underlying question is, and perhaps the real question is, under the "hybrid" articulated by this Court in Dannenberg, to satisfy the intent and spirit of an indeterminate sentence under the determinate sentencing law, the tension between Penal Code §§ 3041(a) and (b), when does punishment end and rehabilitation begin?

Punishment and rehabilitation are two lines on a graph. The time line, or punishment line, is fixed proportionate to degree of conviction for murder; in case at bench, second degree murder, 15 years, and fine tuned to the facts and circumstances of his offense in Cal. Code Regs., tit. 15, 2403(c), 15 to 21 years. Only the most egregious offenses, cannibalism, axe murders, dismemberment, sex with the corps, etc., are not set out in the matrix. Thus, just about every indeterminately sentenced prisoner will satisfy the legisaltively prescribed punishment for his or her commitment offense. On this point, the determinate component of the sentence which is clearly objective, there can be no question. "For example, the provision under which [Petitioner] was sentenced provides that a person guilty of second degree murder 'shall be punished' in the state prison for a term of 15 years to life" (In re Morrall (2002) 102 Cal.App.4th 280, 289). The Morrall court continued: "With respect



to persons sentenced to indeterminate terms, the purpose of punishment is satisfied by the requirement of service of a minimum period before eligibility for parole" (Id., at 292); thus, punishment is based on the crime. The problem arises in the subjectivity of the rehabilitation component of the sentence. The Board confuses the commitment offense with rehabilitation and no matter the time lapsed uses the commitment offense to deny parole.

On the other hand, under the indeterminate sentencing law (ISL), the law operated "to mitigate the punishment which would otherwise be imposed upon the offender. These laws place emphasis upon the reformation of the offender. They seek to make the punishment fit the criminal rather than the crime" (In re Minnis (1971) 7 Cal.3d 639, 644; In re Lee (1917) 177 Cal. 690, 692). Thus, rehabilitation is the other line on our graph. For some, rehabilitation may exceed the punishment line by years, and for a few, may never occur, remaining in prison for life. That was the intent and spirit of this "hybrid." For the law to work as intended, when a prisoner satisfies the punishment line on the graph, and the rehabilitation line at, or after the punishment line, parole must be granted because any further incarceration serves no legitimate penological purpose.

What is happening today with the Board, gross abuse of discretion and disparity in punishment for similar offenses committed under similar circumstances, is what this Court condemned in In re Rodriguez (1975) 14 Cal. 3d 639, resulting in the Uniform Determinate Sentencing Act of 1976. Thirty years later, however, with the influence of politics via "victims' rights," and prison guards union, the parole process is broke, even corrupt, with the Board being stacked with

victims of violent crime and law enforcement, ignoring court decisions in applying principles of law. Any attempt reformation through the legislature is for naught because of political pressure from special interest. Thus, as it stands, the Board can forever use the commitment offense to deny parole.

In case at bench, the Board ignored the facts to justify a decision already made. Most obvious was telling Petitioner to come up with parole plans that include family support when during the evidence portion of the hearing the Board read a letter from Petitioner's mother offering him a home and financial support and anything he needs to succeed on parole. Secondly, contrary to the Board's own regulations, the Board used Petitioner's minor non-violent prior convictions to deny him parole. Thirdly, at no time has the prosecution ever contest that the shooting of Mr. Stewart was not accidental, which therefore cannot possibly exceed the minimum necessary to sustain the conviction. Finally, although agreeing with the forensic experts that Petitioner poses even less of a threat to the community than the average citizen in the community, found Petitioner to be an unreasonable threat to public safety. Based on the facts, after serving 26 years on a 15 years to life sentence, there is no evidence Petitioner is not suitable for parole and the Board's decision was therefore arbitrary.

In a detailed analysis of California and federal law, inter alia, Greenholtz v. Inmates of Nebraska Penal and Correctional Complex (hereafter Greenholtz) (1979) 442 U.S. 1; Sass v. California Board of Prison Term (9th Cir. 2006) 461 F.3d 1123; In re Rosenkrantz, (2002) 29 Cal.4th 616; In re Dannenberg, supra, 34 Cal.4th 1061,

California's Second Appellate District recently held under both the California and United States constitutions, life prisoners in California have a "liberty interest" in parole and judicial review is the "some evidence" standard (In re Lawrence (2007) 150 Cal.App.4th 1511, Petition for Review granted, request for stay denied).

"The only ground for a parole denial is found in Penal Code section 3041, subdivision (b), which provides that a release date shall be set 'unless [the Board] determines that ... consideration of the public safety requires a more lengthy period of incarceration'" (In re Roderick (2007) \_\_\_\_ Cal.App.4th \_\_\_\_, 2007 WL 2343737, \*12 (8/17/2007)). The commitment offense, however, loses predictability of threat to public safety over time when weighed against rehabilitation (In re Lawrence, *supra*, 150 Cal.App.4th, at 1561; In re Lee (2006) 143 Cal.App.4th 1400, 1412, Petitioner fore Review denied, depublication denied; In re Elkins (2006) 144 Cal.4th 475, 500, Petition for Review denied, depublication denied; In re Scott II (2005) 133 Cal.App.4th 573, 594-595; Rosenkrantz v. Marshall (C.D. Cal. 2006) 444 F.Supp.2d 1063, 1065; Sanchez v. Kane (C.D. Cal. 2006) 444 F.Supp.2d 1049, 1062).

Although the "some evidence" standard of review is highly differential and extremely low, "it does not convert a court reviewing the denial of parole into a potted plant" (In re Scott I (2004) 119 Cal.App.4th 871, 898). The United States Supreme Court "explained that the 'some evidence' standard applies only to questions of evidentiary sufficiency" (In re Ramirez (2001) 94 Cal.App.4th 549, 563-564), explaining Edwards v. Balisok (1997) 520 U.S. 641, 648). Ramirez was disapproved on other grounds (In re Dannenberg, *supra*,

34 Cal.4th, at 1100). Moreover, as articulated by the United States Supreme Court in the Nation's controlling case: "The decision turns on...primarily what a man is and what he may become rather than simply what he has done" (Greenholtz, supra, 442 U.S., at 10); therefore, the principle of law that "[t]he test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety" (In re Lee, supra, 143 Cal.App.4th, at 1408), In re Elkins, supra, 144 Cal.App.4th, at 499), clearly articulates the spirit of the law. "'Not only does the passage of time in prison count for something, exemplary behavior and rehabilitation in prison count for something according to Biggs and Irons. Superintendent v. Hill's standard might be quite low, but it does not require that the decision not be arbitrary'" (Willis v. Kane (N.D. Cal. 2007), 485 F.Supp.2d 1126, 1130); In re Roderick, supra, 2007 WL 2343737, \*21). A two-prong test, therefore, is appropriate. The first prong to determine "sufficiency of the evidence"; then the second prong, can a rational connection be made between the evidence and finding a CURRENT threat to public safety (In re Lee, supra, 143 Cal.App.4th, at 1408 fn. 3).

As the Ninth Circuit instructed in Irons v. Carey (9th Cir. 2007), 479 F.3d, 568, at 665:

"We hope that the Board will come to recognize that in some cases, indefinite detention based solely on an inmate's commitment offense, regardless of the extent of his rehabilitation, will at some point violate due process, given the liberty interest that flows from the relevant California statutes."

In light of the foregoing, California courts are correct in following Greenholtz and Irons in the principle that "the fact there

is 'some evidence' the crime was committed and committed a certain way at a certain time does not mean that crime necessarily represents 'some evidence' the prisoner's release on parole will pose an unreasonable risk of danger to the public safety at the present time. Whether it possesses the necessary predictive value depends both on the nature of the crime and how long ago it happened" (In Lawrence, supra, 150 Cal.App.4th, at 1540); In re Lee, supra, 143 Cal.App.4th, at 1408 ["The test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety"]; see also In re Elkins, supra, 144 Cal.App.4th, at 499). These cases, and other state and federal cases, clearly articulate the spirit of the law. The bottom line is, relative to time since the commitment offense and rehabilitation, "whether the inmate will be able to live in society without committing additional antisocial acts" (In re Lawrence, supra, 150 Cal.App.4th, at 1543).

The significance of the above observations is this: there will come a point, which already may have arrived, when petitioner would have become eligible for parole if he had been convicted of first degree murder. Once petitioner reaches that point, it is appropriate to consider whether his offense would still be considered especially egregious for a first degree murder in order to promote the parole statute's goal of proportionality between the length of sentence and the seriousness of the offense" (In re Rosenkrantz, supra, 29 Cal.4th, at 690, Moreno, J., concurring, emphasis in original).

Was Petitioner a threat to public safety 26 years ago? Yes. The focus, however, is to be on CURRENT parole risk, not a risk over



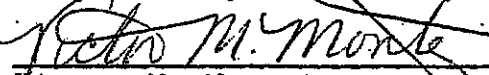
a quarter century in the past. Thus, if the prisoner has served the minimum term, which Petitioner has, exceeding it by 16 years, and there is no evidence he is not rehabilitated, which there is not, then he is to be paroled; if not, it violates due process because it serves no legitimate penological interest to continue punishing him repeatedly with "adversary hearings in order to continue the confinement" (Greenholtz, 442 U.S., at 14, supra).

### C O N C L U S I O N

Because the lower court decision was not based on CURRENT threat to public safety, being unreasonable in light of the facts, in that this Court has granted review and issued an Order to Show Cause returnable to the offending appellate court, in at least five cases over the past six months when the petitioner is represented by counsel, when the appellate court denied the writ on the commitment offense after 15 to 20 years had lapsed since the commitment offense, and it has now been 26 years since Petitioner's commitment offense, 16 years beyond his minimum, it is respectfully requested that the Court grant review and issue an Order to Show Cause returnable to the Appellate Court, Second Appellate District, to vacate its decision in this case and redecide the case pursuant to Lee, Elkins, Scott II, and Lawrence. Anything less would be a denial of equal protection of the law.

DATED: 6 Nov. 2007

Respectfully submitted,

  
 Victor M. Montez  
 Petitioner in pro per

ATTACHMENT "A"

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re

VICTOR M. MONTEZ,

on

Habeas Corpus.

B202287

(L.A.S.C. Nos. A146105, BH004498)

ORDER

COURT OF APPEAL - SECOND DIST.

**FILED**

NOV - 2 2007

JOSEPH A. LANE

Clerk

P. GONZALEZ

Deputy Clerk

THE COURT\*:

The petition for writ of habeas corpus, filed September 21, 2007, has been read and considered.

The petition is denied.

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\*MALLANO, Acting P. J.

VOGEL, J.

JACKSON, J.\*\*

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\*\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

PROOF OF SERVICE BY MAIL

CASE NAME: MONTEZ v. CURRY

CASE NO. : Second App.Dist. No. B202287

I, Victor M. Montez, hereby declare that I am a party to the above titled action and am over the age of eighteen (18), and I did serve a true copy of the following:

**PETITION FOR REVIEW**

by placing a true copy in an envelope with first class postage fully prepaid and said envelope surrendered to correctional staff at the Correctional Training Facility for delivery to the prison mail room and therefrom delivered to the local United States Post Office the next business day from which there is postal service between the place of mailing and the addressee:

Office of Attorney General  
110 West "A" Street, #1100  
San Diego, CA 92101

California Court of Appeals  
Second Appellate District  
300 S. Spring St., Fl.2, N-Tower  
Los Angeles, CA 90013

I declare under penalty of perjury that the foregoing is true and correct, doing so this 7th day of November, 2007, at Soledad, California.

Persuant to the Mailbox Rule, this document is filed when handed over to prison staff for mailing (see In re Jordan (1992) 4 Cal.4th 116, 119-120, citing Houston v. Lack 487 U.S. 266).

  
Victor M. Montez

## **EXHIBIT 5**



ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION ONE

In re

VICTOR M. MONTEZ,

on

Habeas Corpus.

B202287

(L.A.S.C. Nos. A146105, BH004498)

ORDER

COURT OF APPEAL - SECOND DIST.

**FILED**

NOV - 2 2007

JOSEPH A. LANE Clerk

P. GONZALEZ Deputy Clerk

THE COURT\*:

The petition for writ of habeas corpus, filed September 21, 2007, has been read and considered.

The petition is denied.

---

  
\*MALLANO, Acting P. J.

  
VOGEL, J.

  
JACKSON, J.\*\*

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\*\*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

# **EXHIBIT 6**

Court of Appeal, Second Appellate District, Div. 1 - No. B202287  
S158142

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re VICTOR M. MONTEZ on Habeas Corpus

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The petition for review is denied.

Werdegarr, J., was absent and did not participate.

SUPREME COURT  
FILED

JAN - 3 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE  
Chief Justice